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In The Supreme Court of the United States

RAMONA D. TAYLOR,
JUDGE OF THE SECOND JUDICIAL DISTRICT,
Petitioner,

v.

JUDICIAL INQUIRY AND REVIEW
COMMISSION OF VIRGINIA,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a state court judge entitled to substantive and procedural due process in a disciplinary proceeding?

2. In a case of "original jurisdiction" where the Constitution of Virginia specifically requires that the Supreme Court of Virginia conduct a "hearing in open court", were Judge Taylor's due process rights violated when the court declined to conduct an evidentiary hearing?

3. As applied to the record in this case, are Canons 1, 2 and 3 of the Canons of Judicial Conduct for the State of Virginia sufficiently definite for purposes of due process considerations in the disciplinary context?

PARTIES TO THE PROCEEDING

Petitioner: Ramona D. Taylor, Judge of the Second Judicial District

Respondent: Judicial Inquiry and Review Commission of Virginia

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PETITION FOR WRIT OF CERTIORARI

Kevin E. Martingayle, counsel for the Honorable Ramona D. Taylor, Judge of the Second Judicial District of the Commonwealth of Virginia ("Judge Taylor"), respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia in this case.

OPINIONS BELOW

This matter proceeded in the Supreme Court of Virginia pursuant to a Complaint filed against Judge Taylor by the Judicial Inquiry and Review Commission ("the Commission" or "JIRC") and proceeded as a case of "original jurisdiction" as required by Article VI, §§1, 10 of the Constitution of Virginia and Code of Virginia §17.1-902.

In a 5-2 opinion dated November 5, 2009, the Supreme Court of Virginia ordered censure of Judge Taylor for "engaging in conduct prejudicial to the proper administration of justice." Thereafter, the court denied a petition for rehearing. Further, the court denied a request by Judge Taylor that it stay issuance of the mandate in this case until such time as the United States Supreme Court has an opportunity to act on this appeal.

The Supreme Court of Virginia's opinion is reported as Judicial Inquiry and Review Commission of Virginia v. Taylor, 278 Va. 699, 685 S.E.2d 51 (2009), and is reprinted at App. 1.1-55. The subsequent orders of the court dated December 17, 2009, January 20, 2010 and March 15, 2010 are reprinted at App. 1.79-86.

INTRODUCTION

After denying Judge Taylor an evidentiary hearing or trial in a case of original jurisdiction, the Supreme Court of Virginia censured her for "engaging in conduct prejudicial to the proper administration of justice." The essence of the charge against Judge Taylor was that she allegedly acted to thwart a juvenile's "right" to appeal a post-adjudication, pre-disposition temporary detention after she concluded that statutory bail provisions did not apply.

In reaching its holding, the court: (1) summarily rejected "as applied" due process challenges to the subject "Canons of Judicial Conduct for the State of Virginia", (2) permitted the investigating Commission to violate Judge Taylor's due process rights, (3) rejected conflict of interest

issues raised by Judge Taylor[1], (4) denied Judge Taylor an evidentiary hearing "in open court" and (5) made factually and legally erroneous findings of "waiver" to the prejudice of Judge Taylor.

The United States Supreme Court has not issued any opinion specifically describing the due process rights of state judges, and decades of jurisprudence from the lower courts reveals fundamentally and irreconcilably conflicting approaches to rights grounded in the United States Constitution.

Because judicial discipline has an obvious and direct effect on an entire branch of government and, therefore, impacts not only judges, lawyers and

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[1]In formal motions which are part of the record, Judge Taylor objected to the participation of the author of the opinion issued by the Supreme Court of Virginia and the chairman of the Commission on the basis that both had previously participated in "informal" prior contacts between Judge Taylor and the Commission. As explained further herein, the "prior contacts" were resolved in favor of Judge Taylor and pursuant to Code of Virginia §17.1-913(A) should have been maintained as confidential thereafter, but were improperly pulled from the confidential files, used against her and made public. In the case of the Commission chairman, it appeared that he was the actual complainant in one of the two previously dismissed complaints. Nevertheless, both the Supreme Court of Virginia and Commission rejected Judge Taylor's assertions that conflicts warranting disqualification or recusal existed.

litigants but, indeed, impacts every member of society, this case presents a matter of substantial importance appropriate for a review under Rule 10 of the Rules of the United States Supreme Court.

STATEMENT OF JURISDICTION

The Supreme Court of Virginia issued its decision on November 5, 2009, denied rehearing on January 20, 2010, and issued the order of censure on March 15, 2010. This Petition is timely and the Court has jurisdiction pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS, RULES OF THE JIRC, CANONS OF JUDICIAL CONDUCT, AND WAIVER RULE OF THE VIRGINIA SUPREME COURT

1. The Fifth Amendment to the United States Constitution provides:

   > No person shall be...deprived of life, liberty, or property, without due process of law....

2. The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.

3. Article VI, §1 of the Virginia Constitution provides, as relevant:

> The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record.
>
> The Supreme Court shall, by virtue of this Constitution, have original

> jurisdiction...in matters of judicial censure, retirement, and removal under Section 10 of this Article....
>
> ****
>
> Subject to the foregoing limitations, the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth.

4. Article VI, §10 of the Virginia Constitution provides, as relevant:

> The General Assembly shall create a Judicial Inquiry and Review Commission consisting of members of the judiciary, the bar, and the public and vested with the power to investigate charges which would be the basis for retirement, censure, or removal of a judge. The Commission shall be authorized to conduct hearings and to subpoena witnesses and documents. Proceedings and documents before the Commission may be confidential as provided by the General Assembly in general law.
>
> If the Commission finds the charges to be well-founded, it may file a formal

complaint before the Supreme Court.

Upon the filing of a complaint, the Supreme Court shall conduct a hearing in open court and, upon a finding of disability which is or is likely to be permanent and which seriously interferes with the performance by the judge of his duties, shall retire the judge from office. A judge retired under this authority shall be considered for the purpose of retirement benefits to have retired voluntarily.

If the Supreme Court after the hearing on the complaint finds that the judge has engaged in misconduct while in office, or that he has persistently failed to perform the duties of his office, or that he has engaged in conduct prejudicial to the proper administration of justice, it shall censure him or shall remove him from office.

* * * * *

This section shall apply to justices of the Supreme Court, to judges of other courts of record, and to members of the State Corporation Commission. The General Assembly also may provide by

general law for the retirement, censure, or removal of judges of any court not of record, or other personnel exercising judicial functions.

5. Code of Virginia §17.1-902 states:

The Commission is vested with the power, and it shall be its duty, to investigate charges arising out of the present or any prior term of office which would be the basis for retirement, censure, or removal of a judge under Article VI, Section 10 of the Constitution of Virginia and the provisions of this chapter even though the subject judge may have been reelected to a new term of office.

The Commission, after such investigation as it deems necessary, may order and conduct hearings at such times and places in the Commonwealth as it shall determine.

If the Commission finds the charges to be well-founded, and sufficient to constitute the basis for retirement, censure, or removal of a judge, it may file a formal complaint before the Supreme Court.

The Commission shall have the authority to make rules, not in conflict with the provisions of this chapter or of general law, to govern investigations and hearings conducted by it.

No act of the Commission shall be valid unless concurred with by a majority of its members.

6. Code of Virginia, §17.1-913(A) states, as relevant:

All papers filed with and proceedings before the Commission, and under §§17.1-909 and 17.1-910, including the identification of the subject judge as well as all testimony and other evidence and any transcript thereof made by a reporter, shall be confidential and shall not be divulged, other than to the Commission, by any person who (i) either files a complaint with the Commission, or receives such complaint in an official capacity; (ii) investigates such complaint; (iii) is interviewed concerning such complaint by a member, employee or agent of the Commission; or (iv) participates in any proceeding of the Commission or in the official recording or transcription

thereof, except that the record of any proceeding filed with the Supreme Court shall lose its confidential character.

* * * * *

All records of proceedings before the Commission which are not filed with the Supreme Court in connection with a formal complaint filed with that tribunal, shall be kept in the confidential files of the Commission.

7. Judicial Inquiry and Review Commission Rule 15(A)(3) provides:

A. After an investigation has been concluded, the Commission may take any of the following actions:

* * * * *

3. If the Commission finds the charges against the judge to be well founded but not of sufficient gravity to constitute the basis for retirement, censure or removal, it may summon the judge before the Commission or designated Commission members, and advise the

judge of its findings. The charges shall then be removed from the Commission's docket but may, nevertheless, be considered with any other future charges against the judge.

8. Judicial Inquiry and Review Commission Rule 16(A-C) provides:

A. It shall be the responsibility of Counsel to maintain the records of the Commission in the following manner:

B. Proceedings that are disposed of by Counsel or the Commission without an adverse finding by the Commission against a judge.

C. All records related to such proceedings shall be maintained in the Commission's confidential files. Counsel shall destroy such records upon the judge's death, resignation, or retirement not subject to recall.

9. Canon 1 of the Canons of Judicial Conduct for the State of Virginia provides:

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of these Canons are to be construed and applied to further that objective.

10. Canon 2(A) of the Canons of Judicial Conduct for the State of Virginia provides:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

11. Canon 3 of the Canons of Judicial Conduct for the State of Virginia states, as relevant:

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.

* * * * *

B. Adjudicative Responsibilities

* * * * *

> (2) A judge shall be faithful to the law and maintain professional competence in it....

12. Rule 5:25 of the Rules of the Virginia Supreme Court provides:

> Error will not be sustained to any ruling of the trial court or the commission before which the case was initially tried unless the objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice.

STATEMENT OF THE CASE

A. Proceedings Before The Commission

In a notice dated January 13, 2009 (as amended without objection on March 10, 2009), the Commission notified Judge Taylor of the existence of a complaint against her and the requirement to file a written answer. (App. 1.56-60) (attachments omitted)). Judge Taylor filed a timely "Answer to Notice of Formal Charges" (App. 1.61-65 (attachments omitted)) and the matter proceeded to

an investigatory hearing on March 10, 2009.[2]

Originally, the Commission charged that Judge Taylor, as "Chief Judge", had issued a "direct order" to the court clerk "not to process" an appeal. However, after counsel for Judge Taylor and the Commission conferred with the clerks involved, a pre-hearing stipulation was executed on February 25, 2009, and it states as follows:

> The parties hereby stipulate that on or about May 3-4, 2007, Barry Koch, Esquire, went to the Clerk's office of the Juvenile and Domestic Relations District Court for the City of Virginia Beach and attempted to file a notice of appeal on behalf of his juvenile client, Kristian Moore, from the order signed by Judge Ramona Taylor on May 3, 2007, that had denied the defendant's "Motion for Bond and Release Pending Sentencing Hearing." The order stated expressly: "This order is an interlocutory, nonappealable order." Mr. Koch asked the deputy clerk at the counter if she would check to determine whether the notice of appeal should be

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[2] The Commission does not have the power to conduct a "trial". All that the Commission is constitutionally empowered to do, as relevant here, is investigate and, if deemed warranted, file a complaint in the Supreme Court of Virginia.

> accepted and processed. The deputy clerk agreed to do so, left Mr. Koch's presence and consulted with the Clerk, who referred her to the judge. The deputy clerk then went to Judge Taylor and advised her that Mr. Koch was at the Clerk's office to file a notice of appeal from the order in question. Judge Taylor confirmed that the order by its express terms was not appealable, **but did not state to the deputy clerk that the notice of appeal should not be accepted**. The deputy clerk then informed Mr. Koch that the order was not appealable and, therefore, the notice of appeal would not be accepted.
>
> After the Virginia Beach Circuit Court's decision in the mandamus case and, after consultation with the Office of the Executive Secretary, the Clerk's office of the Virginia Beach J&DR Court changed its procedure and began to accept and process all notices of appeal regardless of the context.

Judge Taylor was the only witness who testified at the Commission's hearing. The rest of the evidence was received in the form of the above-quoted "Stipulation", and exhibits offered by both the Commission and Judge Taylor.

At the Commission hearing, Judge Taylor explained her interactions with defense counsel and the clerk's office on the bail and appealability issues, as well as her legal reasoning. Her testimony was unrebutted, and her legal analysis of the relevant statutes was strongly supported by the fellow Juvenile and Domestic Relations judges who responded to her inquiries and communications, as proved by e-mail correspondence which was received as evidence.

Despite the evidence, the Commission "determined" that Judge Taylor "violated" Canons 1, 2A and 3B(2) of the Canons of Judicial Conduct, and as a part of its deliberations, considered evidence of two prior "informal contacts" Judge Taylor had with the Commission "that resulted in dismissals." Repeated objections were made to the admission and consideration of these materials.

As a result of the investigatory hearing, the Commission determined that a formal complaint would be filed in the Supreme Court of Virginia pursuant to Article VI, §10 of the Constitution of Virginia and Code of Virginia §17.1-902.

B. Proceedings in the Supreme Court of Virginia

On April 28, 2009, the Commission filed its complaint in the Supreme Court of Virginia. (App.

1.68-71).

On May 21, 2009, Judge Taylor filed her answer to the Commission's complaint. (App. 1.72-78).

The Supreme Court of Virginia, despite having "original jurisdiction" and a constitutional obligation to conduct a "hearing in open court", handled the matter as a typical appeal. The court ordered a briefing schedule and subsequently entertained oral argument on September 17, 2009 as a part of the regular appellate argument docket.

On November 5, 2009, the court issued its opinion along with the other appellate opinions decided that session.

On December 2, 2009, Judge Taylor filed her Petition for Rehearing.

On January 20, 2010, the court denied the Petition for Rehearing. (App. 1.81).

In an order dated March 15, 2010 (App. 1.83), the court denied Judge Taylor's request to stay issuance of the mandate in the case pending appeal to the United States Supreme Court, and in a separate order also dated March 15, 2010, the court issued the order of censure (App. 1.85).

REASONS FOR GRANTING CERTIORARI

I. There is confusion and conflict among the states regarding what due process rights must be afforded to judges in disciplinary proceedings, and there is no definitive opinion from the United States Supreme Court.

Although all judges are required to protect and comply with the United States Constitution, it is an open question how much that same document protects judges. A review of the case law explaining judges' due process rights in disciplinary proceedings reveals a confusing and irreconcilably conflicting patchwork of approaches employed by the states.

> Courts are divided on the issue of whether judges have a sufficient interest in their offices to invoke the protection of the due process clause when disciplinary proceedings are initiated by judicial conduct organizations. The majority of the courts have taken the position that judges do possess a property or liberty interest in the judicial office,[3] and this

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[3] Footnote 112, citing In re Hanson, 532 P.2d 303 (Alaska 1975); In re Nowell, 237 S.E.2d 246 (N.C. 1977); In re Gillard, 271 N.W.2d 785 (Minn. 1978)

clearly seems to be the better view. Except for those few judges who serve "at the pleasure" of some appointing authority, the vast majority of judges serve in office for designated terms, during which they have a continued expectation of office that should give rise to a property interest. Moreover, disciplinary action against a judge can affect not only employment, but reputation and standing in the community as well, thus giving rise to a liberty interest.

Nevertheless, some courts have taken the position that judges enjoy neither a property nor a liberty interest in their judicial offices.[4] One Court has stated as a general proposition that because public offices are created for the benefit of the public and not the office holder, judges possess neither contractual nor vested interests in their judicial offices.[5]

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[4] Footnote 113, citing Gruenburg v. Kavanaugh, 413 F. Supp. 1132 (E.D. Mich. 1976); In re Del Rio, 400 Mich. 665, 256 N.W.2d 727 (1977); O'Neil v. Baine, 568 S.W.2d 761 (Mo. 1978).

[5] Footnote 114, citing O'Neil v. Baine, 568 S.W.2d 761 (Mo. 1978).

> The logic of the Court's rationale, however, is questionable; that judicial offices are created for the benefit of the public does preclude the possibility that judges have a liberty or property interest in their offices. Taken to its logical extreme, this rationale would allow the summary removal of judges for no good reason at all.

James J. Alfini, et al., Judicial Conduct and Ethics, §13.10, "Procedural Due Rights of Judges", 4th Ed. (2007).

In three cases decided since 2006, the Supreme Court of Virginia has been inconsistent in its approach to due process considerations in judicial discipline cases.

In Judicial Inquiry & Review Comm'n v. Elliott, 272 Va. 97, 630 S.E.2d 485 (2006), the court evaluated and dismissed charges brought by the Commission against Judge Elliott. Although the dismissal was grounded in a finding that the complaint was not properly before the court (Id., 272 Va. at 123, 630 S.E.2d at 499), the court made two findings which are important to Judge Taylor's case. Specifically, a judge is entitled to due process, and as a part of that, the Commission is obligated to follow the law and its own rules. On these topics, the court stated:

The procedural due process requirements of the Constitution of Virginia compel the Commission, and this Court, to recognize the balance that must be struck between protecting the integrity of the judiciary and the rights of individual judges. To that end, the Commission must employ adequate procedural safeguards to prevent the arbitrary deprivation of the rights and property interests of a judge who stands accused of official misconduct. See In re Ruffalo, 390 U.S. 544, 551-52 (1968). This is so not merely because the removal of the judge deprives him of vested property rights, but also because the lesser penalty of censure imperils the judge's "good name, reputation, honor, or integrity." Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971); see also Paul v. Davis, 424 U.S. 693, 730 (1976); Goss v. Lopez, 419 U.S. 565, 574-75 (1975); In re Deming, 736 P.2d 639, 648 (Wash. 1987). Accordingly, public confidence in the judiciary and the administration of our legal system can be maintained only where the Commission in the exercise of its authority to oversee the conduct of judges is held to the same high standard of fair dealing every

citizen has the right to expect from the government.

* * *

When an administrative body is delegated rulemaking authority by the General Assembly, it is given broad discretion to determine the procedures it will employ in carrying out its legislative mandate, so long as the rules it adopts are not inconsistent with the authority of the statutes that govern it or with principles of due process. See, e.g., Sargent Elec. Co. v. Woodall, 228 Va. 419, 424, 323 S.E.2d 102, 105 (1984). "Furthermore, it is an elementary principle of administrative law that agencies must follow their properly promulgated rules." Virginia Committee for Fair Utility Rates v. Virginia Electric & Power Co., 243 Va. 320, 328, 414 S.E.2d 834, 838 (1992). "'For once an agency exercises its discretion and creates the procedural rules under which it desires to have its actions judged, it denies itself the right to violate these rules. If an agency in its proceedings violates its rules and prejudice results, any action taken as a result of the proceedings cannot stand.'" Id. (quoting Scott v. Heckler, 768 F.2d 172, 178-7 (7th Cir. 1985)). These

> principles are applicable to the Commission.

Id., 272 Va. at 114-15, 630 S.E.2d at 493-94.

The Elliott opinion was followed the next year by Judicial Inquiry and Review Comm'n v. Shull, 274 Va. 657, 651 S.E.2d 648 (2007). In Shull, the court appeared to retreat from the sweeping promises of due process articulated in Elliott. In casting aside Judge Shull's due process arguments, the court stated as follows:

> As a preliminary matter, Judge Shull raises certain due process arguments concerning the manner in which the Commission conducted the suspension hearing. Judge Shull asserts that the Commission violated his due process rights by effectively shifting the burden of proof and requiring him to present evidence at that suspension hearing, and by refusing his request to cross-examine adverse witnesses whose accounts appeared in the Commissioner's statement of fact.
>
> We do not reach the merits of these arguments. Our jurisdiction over the formal charges filed in this Court is purely original in nature. The

> Commission, not this Court, is vested with the statutory authority to determine whether a judge should be suspended with pay until resolution of a pending investigation. Moreover, neither the Constitution nor the Code has given this Court authority to review the Commission's suspension hearing procedures or the Commission's decision to suspend a judge with pay until final resolution of pending charges. In the absence of constitutional or statutory authority to do so, we are not at liberty to presume such authority.

Id., 274 Va. at 671, 651 S.E.2d at 656 (internal citations omitted).

As noted in a law review article, the Supreme Court of Virginia's analyses in Elliott and Shull simply cannot be reconciled.

> The supreme court started down the right path in Elliott when it found the court had jurisdiction to determine that the JIRC must "employ adequate procedural safeguards" to protect judges' due process rights. The court regressed in Shull, however, when it held that it has no jurisdiction to hear

> procedural due process claims during a JIRC proceeding without an express grant from the Constitution of Virginia or the Virginia Code.

Jeffrey D. McMahan, Jr., Guarding the Guardians: Judges' Rights in Virginia's Judicial Inquiry and Review Commission, 43 U. RICH. L. REV. 473, 500-01 (2008) (internal footnotes and citations omitted).

The very next judicial discipline opinion decided by the Supreme Court of Virginia is the subject case involving Judge Taylor. The Taylor opinion appears to retreat even further from the Elliott opinion's recognitions of due process rights.

First, the court treated the Commission's investigatory hearing as a trial, and declined repeated requests and opportunities to conduct evidentiary hearings to make necessary credibility determinations. Instead of taking advantage of Judge Taylor's availability to testify[6], the court

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[6] Pursuant to an order of the court, Judge Taylor attended the proceedings on September 17, 2009 in person and throughout the life of the case in court, she repeatedly made known her willingness to engage in evidentiary proceedings. (App. 1.74, 76-77; see also "Petition for Rehearing" dated December 2, 2009, p. 14). Despite bearing the burden of proof of "clear and convincing evidence" (App. 1.17), the Commission actually took the position that the presentation of testimony or other evidence in the Supreme Court of Virginia was "not necessary". (App. 1.70).

merely read the Commission's printed record of her unopposed testimony and declared her explanations to be "disingenuous" and "implausible".

Next, the court ignored conflict of interest problems and cited Virginia Supreme Court Rule 5:25 in support of two different waiver determinations where the rule, by its own language and all known precedent, has no application to a mere investigatory hearing.

Finally, the court permitted the Commission to admit, consider and insert into the public court record evidence and exhibits from previously dismissed "informal contacts" between Judge Taylor and the Commission, despite there being no statutory authority for doing so.

The result is that Judge Taylor has been tarnished by tainted proceedings, labeled untruthful and denied any opportunity to have a true trial or evidentiary hearing before the justices sitting collectively as the "trier of fact", notwithstanding the Virginia constitutional provisions stating that a judicial disciplinary proceeding is before the Supreme Court of Virginia as a case of "original jurisdiction" and mandating a "hearing in open court".

Further demonstrating the frightening imprecision and utter unpredictability inherent in

judicial discipline cases is the Supreme Court of Virginia's relatively recent opinion in Judicial Inquiry & Review Comm'n. v. Peatross, 269 Va. 428, 611 S.E.2d 292 (2005). In that case, the court reviewed a number of incidents where the charges against the judge involved matters of inappropriate demeanor, errors of law, and an alleged misrepresentation in a conversation between Judge Peatross and the Chief Justice of the Supreme Court of Virginia. In deciding to dismiss all of the charges against Judge Peatross, the court stated the following:

> For these reasons, we hold that there is no clear and convincing evidence showing that Judge Peatross violated the specified Canons as charged. We reiterate that some of Judge Peatross' actions in the various matters were the result of mistaken interpretations of the law and his authority thereunder, and some of his conduct did not exemplify the level of professionalism that judges in this Commonwealth should exhibit. His actions and conduct were not, however, so egregious as to amount to judicial misconduct or conduct that was prejudicial to the proper administration of justice warranting censure or removal from office. Therefore, we will dismiss the complaint.

Id., 269 Va. at 449-50, 611 S.E.2d at 403-04.

In Judge Taylor's case, there is no allegation that she was uncivil or otherwise displayed an improper judicial demeanor, nor is there any allegation that she has made a misrepresentation to any tribunal. Similar to the case of Judge Peatross, however, is the allegation that she may have committed legal errors, and also similar is the question of whether any legal errors, if committed, were intentional. With Judge Peatross, the court found that he committed multiple errors and omissions in his handling of several hearings. Id., 269 Va. at 447-48, 611 S.E.2d at 402-03. Nevertheless, the court concluded that these legal errors did not "rise to the level of clear and convincing evidence of a violation of the Canons that would warrant censure or removal from office" and stated that "judges may not be disciplined for errors of judgment or errors of law." Id., 269 Va. at 448, 611 S.E.2d at 403 (internal citation omitted); see also Mississippi Comm'n On Jud. Perf. v. Martin, 921 So.2d 1258, 1268 (Miss. 2005) (analyzing a fact pattern very similar to Judge Taylor's case, and in dismissing the matter, observing the threat to the "efficiency and independence of the judiciary" when "honest errors" are subject to punishment); In re Quirk, 705 So.2d 172, 177-83 (La. 1997) (discussing in detail the dangers of punishing judges for mere legal errors, and rejecting the Judiciary Commission's request for a finding of misconduct).

Despite the clear parallels between the Peatross and Taylor cases, the same court reached opposite results. In a matter as important as judicial discipline, it is imperative to have greater precision, accuracy and predictability than demonstrated in the case law in Virginia and elsewhere.

Judge Taylor respectfully submits that this Court should grant certiorari and resolve the due process debate in judicial discipline cases. By granting certiorari, this Court will undoubtedly receive input from various *amici curiae* suggesting due process tests or guideposts that this Court should announce for the states to follow, and the issue is unquestionably ripe for review after decades of state court disagreement.

II. There is a sharp and long-standing disagreement among state and federal courts in jurisprudence dealing with "vagueness" arguments, and there is no definitive opinion from the United States Supreme Court dealing with a vagueness challenge to canons of judicial conduct in a disciplinary context.

"An independent judiciary and a vigorous, independent bar are both indispensable parts of our system of justice." In Re McConnell, 370 U.S. 230, 236 (1962).

Unfortunately, broadly worded, largely aspirational judicial canons are poor substitutes for meaningful rules of conduct when applied to judges in disciplinary cases, and the danger of unpredictable and selective enforcement constitutes a serious threat to judicial independence.

In Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991), this Court concluded that a Nevada Supreme Court rule governing pretrial publicity and attorney statements was "void for vagueness" (Id., at 1048), and said that the "question is not whether discriminatory enforcement occurred here...but whether the Rule is so imprecise that discriminatory enforcement is a real possibility." Id., at 1051. See also, Kolender v. Lawson, 461 U.S. 352 (1983) (law requiring a person to provide "credible and reliable" identification to police deemed unconstitutionally vague); Coates v. Cincinnati, 402 U.S. 611, 614 (1971) ("annoying" determined to be too vague because "no standard of conduct is specified at all."); Gelling v. Texas, 343 U.S. 960 (1952) (per curiam) ("of such character as to be prejudicial to the best interests of the people"...fails "on the score of indefiniteness." (Frankfurter, concurring)).

There is much conflict and confusion among the courts regarding the degree of precision required in statutes, ordinances and regulations. Compare, e.g. City of Beaufort v. Baker, 432 S.E.2d 470, 474 (S.C. 1993) (upholding a noise restriction as "clear

enough") with Thelen v. State, 526 S.E.2d 60, 62 (Ga. 2000) (striking down a noise ordinance as "inherently vague and elastic"); Squire v. Pace, 380 F. Supp. 269 (W.D. Va. 1874), aff'd 516 F.2d 240 (4th Cir. 1975), cert. denied 423 U.S. 840 (1975) (granting habeas corpus and striking down on both free speech and vagueness grounds a Virginia "disorderly conduct" statute) with Flannery v. City of Norfolk, 216 Va. 362, 218 S.E.2d 730 (1975) (rejecting a vagueness challenge to a charge of maintaining a "disorderly house").

A close reading of the subject Judicial Canons reveals that they are a mix of clear standards and vague aspirational statements. Canon 1 sets forth only one mandatory statement of conduct in its text; specifically, it asserts that a judge "shall personally observe [high standards of conduct] so that the integrity and independence of the judiciary will be preserved." While this is a fair description of what every judge should aspire to do, it does not describe a meaningful standard of conduct for purposes of a disciplinary case.

Canon 2 states that a "judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The "comply with the law" portion is clear, but mandating "respect" and acting "at all times in a manner that promotes public confidence..." sets forth

no particular standards or guidelines. As stated by this Court in Gentile, supra, an interpretation of these portions of Canon 2 creates a "real possibility" of "discriminatory enforcement." See also Booth v. Commonwealth, 197 Va. 177, 179-81, 88 S.E.2d 916, 917-18 (1955) ("improper person" for purposes of regulatory alcohol interdiction is overly vague, and subjects litigants to the individual philosophy of law enforcement officials, judges and juries, which renders subsequent judicial review "in effect...inoperative".).

The relevant portion of Canon 3 requires that a judge be "faithful to the law and maintain professional competence in it...." Maintaining "professional competence" is fair as a standard, and similar terms are routinely used in litigation involving other professionals such as doctors, lawyers, architects, etcetera. However, the requirement to "be faithful to the law" is far more aspirational than measurable, particularly if it is designed to be something different from or in addition to maintaining professional competence.

Accordingly, as applied to the record in this matter, the subject Judicial Canons are unconstitutionally vague and insufficiently definite to satisfy due process rights in a disciplinary setting.

In rejecting Judge Taylor's due process challenge the concept of being censured pursuant to

vaguely worded canons, the Supreme Court of Virginia offers no explanation as to how a judge or anyone else should be able to determine in advance whether the kinds of supposed legal mistakes made by Judge Taylor warrant any form of discipline. Instead, the court simply cites cases from other state courts which have rejected similar vagueness challenges. (App. 1.36, citing cases). Oddly, this is the same court which recently invalidated on vagueness grounds a city noise ordinance in Tanner v. City of Virginia Beach, 277 Va. 432, 674 S.E.2d 848 (2009), cert. denied, case no. 09-314 (January 19, 2010) in which the court stated:

> The constitutional prohibition against vagueness derives from the requirement of fair notice embodied in the Due Process Clause. See United States v. Williams, 553 U.S. __ 06694, ___, 128 S.Ct. 1830, 1845 (2008); City of Chicago v. Morales, 527 U.S. 41, 56 (1999); Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). The doctrine requires that a statute or ordinance be sufficiently precise and definite to give fair warning to an actor that contemplated conduct is criminal. See Kolender v. Lawson, 461 U.S. 352, 357 (1983); Grayned, 408 U.S. at 108. Thus, the language of a law is unconstitutionally vague if persons of

> "common intelligence must necessarily guess at [the] meaning [of the language] and differ as to its application." Connally v. General Construction Co., 269 U.S. 385, 391 (1926); accord Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971); Cameron v. Johnson, 390 U.S. 611, 616 (1968).
>
> The constitutional prohibition against vagueness also protects citizens from the arbitrary and discriminatory enforcement of laws. A vague law invites such disparate treatment by impermissibly delegating policy considerations "to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." Grayned, 408 U.S. at 108-09; see Kolender, 461 U.S. at 357-61.

Id., 277 Va. at 439, 674 S.E.2d at 852.

These statements of concern regarding vagueness cannot be squared with disciplinary enforcement of the broadly worded, largely aspirational language in the subject judicial canons, nor can they be reconciled with the short shrift

treatment that the court gave to Judge Taylor's due process arguments.

In a partial dissent in the case In re Terry, 262 Ind. 667, 323 N.E.2d 192, reh'g denied, 329 N.E.2d 38 (1975), cert. denied, 423 U.S. 867, 96 S. Ct. 129, 42 L.Ed.2d 97, Justice DeBruler made the following salient observations applicable to this case:

> Rules 1, 3 and 10 adopted by this Court on March 8, 1971, were not adopted for the purpose of setting legal standards for judicial conduct, the violation of which could subject a judge to disciplinary action. They are simply too vague to serve this purpose. No judge could possibly know what conduct on his part might be deemed to be 'improprietous', 'discourteous', or 'idiosyncratic'. This State does have a legitimate interest in governing the conduct of judges in their official duties and in matters which directly affect the conduct of their official duties. But in furthering this interest by law, we must set reasonably specific standards and afford those charged with violating those standards a fair procedure. It is the first duty of the courts to construct a 'formulated basis in reason' for 'justifying and guiding emotion and

> instinct'. Sherman v. U.S. (1958), 256 U.S. 369, 78 S.Ct. 819, 2 L.Ed.2d 848.

Id., 323 N.E.2d at 203.

Unfortunately, Justice DeBruler's analysis was rejected by the majority of the justices on the Indiana Supreme Court, and the Supreme Court of Virginia is correct in noting that the vast majority of opinions dealing with judicial misconduct have rejected vagueness challenges to judicial canons. However, it is fair to say that there has been very little meaningful analysis explaining how broadly worded canons meet constitutional requirements when other broadly worded laws, ordinances and regulations do not.

Judge Taylor's case presents an appropriate vehicle for this Court to analyze and determine with a vagueness analysis whether the canons used to determine a finding that Judge Taylor engaged in "conduct prejudicial to the proper administration of justice" are sufficiently definite for purposes of due process.

CONCLUSION

This petition for a writ of certiorari presents important questions of federal constitutional law. This Court should grant certiorari to address and clarify constitutional due process and vagueness

standards applicable to judicial disciplinary proceedings and underlying canons of judicial conduct. Ultimately, this Court should reverse the Supreme Court of Virginia's erroneous legal interpretations and its misapplication of this Court's jurisprudence and the plain language of the due process guarantees set forth in the United States Constitution.

Respectfully submitted,

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April 20, 2010

No. _____

In The
Supreme Court of the United States

RAMONA D. TAYLOR,
JUDGE OF THE SECOND JUDICIAL DISTRICT,
Petitioner,

v.

JUDICIAL INQUIRY AND REVIEW
COMMISSION OF VIRGINIA,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Virginia

APPENDIX

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[DATED NOVEMBER 5, 2009]

PRESENT: Koontz, Kinser, Lemons, Goodwyn and Millette, JJ., and Carrico and Russell, S.JJ.

JUDICIAL INQUIRY AND REVIEW COMMISSION OF VIRGINIA

v. Record No. 090845

OPINION BY JUSTICE LEROY F. MILLETTE, JR.
November 5, 2009

RAMONA D. TAYLOR, JUDGE OF THE SECOND JUDICIAL DISTRICT

The Judicial Inquiry and Review Commission ("the Commission") filed the present complaint against Ramona D. Taylor, Judge of the Second Judicial District, pursuant to the original jurisdiction of this Court set forth in Article VI, § 10 of the Constitution of Virginia and Code § 17.1-902. The Commission asserted that its charges against Judge Taylor for allegedly violating the Canons of Judicial Conduct ("the Canons") are well founded in fact and are of sufficient gravity to constitute the basis for censure by this Court.

I. FACTS AND PROCEEDINGS

On January 13, 2009, the Commission issued a Notice establishing formal charges against Judge Taylor that she had engaged in misconduct or engaged in conduct prejudicial to the proper administration of justice while serving as a judge in the Juvenile and Domestic Relations District Court for the City of Virginia Beach ("the juvenile and domestic relations court"). Judge Taylor was charged with alleged violations of Canons 1, 2, 2A, and 3B(2).

The Commission alleged that on May 2, 2007, at the conclusion of an adjudicatory hearing on a misdemeanor assault charge against a 15 year old defendant ("K.M."), who was not then in custody, Judge Taylor found K.M. guilty following his plea of "not innocent." During the adjudicatory hearing, the Commission alleged, "someone in the courtroom audience blurted out that [K.M] had used a racial epithet toward the victim of the assault," and Judge Taylor called witnesses to the stand to testify about the use of the racial epithet. According to the Commission, Judge Taylor found that K.M. represented a risk of harm to the community, and remanded him to custody pending a sentencing hearing scheduled for May 24, 2007.

The Commission further alleged that Judge

Taylor denied K.M.'s request for immediate sentencing so that an appeal could be noted, and ordered that a social history be compiled for the sentencing hearing. In addition, the Commission alleged that Judge Taylor denied K.M.'s May 2, 2007 written motion for bond and release pending the sentencing hearing by order entered on May 3, 2007 that expressly stated it was "an interlocutory, non-appealable order" ("May 3rd order").

The Commission further contended that, by letter from his counsel dated May 4, 2007, K.M. sought reconsideration of the May 3rd order. The Commission alleged that K.M.'s four-page letter outlined K.M.'s factual and legal argument in support of bond, his appeal of the denial of bond to the next higher court, and his request for an immediate sentencing so that he could immediately appeal, because otherwise denying bail and imposing incarceration would make K.M.'s right to a de novo appeal meaningless. However, according to the Commission, Judge Taylor denied reconsideration by an order in which she maintained her position that the denial of K.M.'s motion for bond and release was interlocutory and non-appealable ("May 8th order"). [1] The

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[1] Judge Taylor entered a "Corrective Order" containing the same language that "[t]his order is an interlocutory, nonappealable order" on May 8, 2007 nunc pro tunc May 3, 2007.

Commission alleged that when K.M. attempted to appeal his case, the clerk of the juvenile and domestic relations court ("the clerk of court" or "clerk") refused to process the appeal, and K.M. filed a petition for writ of mandamus against the clerk in the Circuit Court for the City of Virginia Beach ("the circuit court"). The writ of mandamus, which was granted by order dated May 11, 2007, directed the clerk of court to process an appeal of Judge Taylor's order. After a bond hearing also conducted on May 11th, the circuit court released K.M. to the custody of his parents.

In Judge Taylor's answer to the Notice of formal charges, she maintained that she did not recall whether K.M.'s counsel requested an immediate sentencing. Judge Taylor admitted that she entered the May 3rd order denying K.M.'s motion for bond and release pending the sentencing hearing, and that K.M. requested reconsideration of that order. However, Judge Taylor denied that K.M.'s counsel cited to authority that clearly gave K.M. the right to appeal the decision denying bail and asserted that the authority cited by K.M.'s counsel is "subject to contrary legal interpretations with regard to its applicability to juvenile defendants detained postadjudication and pre-disposition."

Judge Taylor admitted that at the mandamus hearing, the attorney for the clerk of court asserted that the clerk was "under a direct order by [Judge Taylor] as the Chief Judge not to process the defendant's appeal," but averred that the attorney incorrectly stated the capacity in which Judge Taylor served when she advised the clerk regarding the appealability of the May 3rd order. Judge Taylor asserted that she was functioning as the presiding judge, not as the chief judge, at all times when addressing the clerk regarding the appealability of the May 3rd order. Judge Taylor therefore requested that the formal charges asserted in the Commission's Notice be dismissed.

On March 10, 2009, the Commission conducted an evidentiary hearing on the charges, at which time Judge Taylor was present and represented by counsel. The Commission members voted unanimously to bifurcate the hearing as follows: (1) evidence about a violation of the Canons, and if the Commission found a violation, then (2) other evidence regarding the appropriate sanction, if any.

As part of the evidence before the Commission, the parties stipulated that when K.M.'s counsel tried to file a notice of appeal to the

May 3rd order, the deputy clerk advised Judge Taylor that K.M.'s counsel was attempting to file a notice of appeal and Judge Taylor "confirmed that the order by its express terms was not appealable, but did not state to the deputy clerk that the notice of appeal should not be accepted." The parties further stipulated that "[t]he deputy clerk then informed [K.M.'s counsel] that the order was not appealable and, therefore, the notice of appeal would not be accepted."

Judge Taylor testified that at the conclusion of the May 2, 2007 hearing on K.M.'s misdemeanor assault charge, she ordered K.M. securely detained "in order to safeguard the community" and ordered a social history, which is a complete background investigation on K.M. Judge Taylor testified that she did not recall K.M.'s counsel's request for a final appealable order.

Judge Taylor testified that in ruling on K.M.'s motion for reconsideration, she said to his counsel:

> [W]hat I'm going to do is I'm going to put all of my authority [in the order] to make sure that . . . just in case you get a Circuit Court judge who we were

> talking about, you know, perhaps a Circuit Court judge shooting from the hip, and that was the expression that I had used, thinking that a lot of times they were busy, they had a very hectic docket, and because we deal with these juvenile codes so frequently, I wanted to make sure that the Circuit Court judge was aware I was relying upon the Juvenile Code.

Judge Taylor stated that when the deputy clerk asked her whether the May 3rd order was appealable, she "may have said something like, Well, I've already addressed that in my order, and that was the end of it." Later in the hearing, Judge Taylor testified that when the deputy clerk asked her if the order was appealable, Judge Taylor said, "[a]s my order states, no. I don't believe it's appealable."

When Judge Taylor was asked at the hearing if it was apparent to her that the deputy clerk inquired into the May 3rd order's appealability because the deputy clerk was trying to decide whether to process the appeal, Judge Taylor replied, "[y]es." Nevertheless, Judge Taylor testified that it was the deputy clerk's responsibility to consult the

clerk of court on how to proceed, and if doubt remained, it was the clerk's office's responsibility to call this Court to obtain guidance on the matter. [2] Judge Taylor testified that she would not instruct the clerk's office on what measures to take, as "that is not [her] function as the judge" and "frankly, as

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[2] Although Judge Taylor repeatedly asserted that the clerk's office should have contacted the Supreme Court of Virginia to obtain guidance, she was presumably referring to the Office of the Executive Secretary (OES), which would be the appropriate administrative department of this Court to contact under these circumstances. OES provides administrative support for all of the courts and magistrate offices within the Commonwealth. Office of the Executive Secretary of the Supreme Court of Virginia, The Official Website for the Supreme Court of Virginia, Court Administration—Office of the Executive Secretary (OES), http://www.courts.state.va.us/courtadmin/aoc/oes/home.html (last visited Oct. 22, 2009). Within the OES, the Department of Judicial Services (DJS) serves as the liaison between the judiciary's administrative offices and the courts throughout the Commonwealth, providing administrative services through publications, trainings, field visits, and the research and support of various programs. Id. (follow "Judicial Services" hyperlink to http://www.courts.state.va.us/courtadmin/aoc/djs/home.html (last visited Oct. 22, 2009)). The Juvenile and Domestic Relations District Court Services division of the DJS provides guidance and assistance to juvenile and domestic relations district court judges and clerks on caseflow management and case processing, among other things. Id. We therefore reference OES in brackets when Judge Taylor refers to this Court in relevant portions of her argument.

the judge, [she does not] get involved in the mechanics of appeals." Judge Taylor reiterated her position by stating: "What I have stated and what I sincerely believe is that my duties as the presiding judge were to decide the case; my duties were finished." In Judge Taylor's opinion, the clerk's office had the responsibility, independent of the language in the May 3rd order, to accept or deny K.M.'s appeal, depending on the guidelines the clerk's office received from this Court [OES].

Judge Taylor described her May 8th order denying K.M.'s motion to rehear as merely a way to "red flag that there was an appealability problem" for the circuit court. Judge Taylor stated, "I don't believe that the legislators, for whatever reason, intended juveniles to be included within the appeal provisions for bond determinations under 19.2-124." Judge Taylor continued, "[s]o for whatever reason, juveniles, I believe, are treated separately," as she believed Code §§ 19.2-124 and 19.2-319 are inapplicable to juvenile detention. Judge Taylor testified that "[a]s the judge interpreting the statute, what [she] indicated to [K.M.'s] attorney was that [she] did not believe that with regard to where [K.M.] was in the proceeding, that he had a right to appeal his detention status." According to Judge Taylor, "[i]t was a legal determination that because of his status, post-adjudication/ pre-disposition, that he didn't have the right to

appeal."

Judge Taylor maintained that when she entered the May 3rd order she "fully expected" K.M.'s counsel to appeal it. For that reason, Judge Taylor contended that she was merely "flagging" the issue of the appealability of the order for the circuit court, but did not "rule" on that issue. Judge Taylor explained:

> I wanted the Circuit Court judge to know I had a concern about it. So by saying this order is an interlocutory, non-appealable order, <u>that wasn't a ruling</u> because that was really for the Circuit Court to look at and to decide whether this case should be properly appealed to that court.

(Emphasis added.)

After the hearing, the Commission determined that Judge Taylor violated Canons 1, 2A, and 3B(2), and "that the charges set forth in the Notice were well-founded and of sufficient gravity to constitute the basis for censure." The Commission made an express finding by clear and convincing evidence that Judge Taylor had acted intentionally to thwart K.M.'s attempt to appeal from the order that denied

his request for bail.

The Commission then considered additional evidence and argument regarding the appropriate sanction. In determining whether to file a formal complaint in this Court pursuant to Article VI, § 10 of the Constitution of Virginia and Code § 17.1-902, the Commission considered two exhibits pertaining to Judge Taylor's two prior informal contacts with the Commission. Judge Taylor's counsel objected to the exhibits, because (1) the informal contacts had resulted in dismissals, arguing that dismissals are inappropriate for consideration by the Commission, and (2) the exhibits were irrelevant and more prejudicial than probative. The Commission received the exhibits into evidence "for the purpose of final disposition." Upon deliberation, the Commission decided that the charges of violations of the Canons were well founded and of sufficient gravity to constitute the basis for censure and filed a complaint against Judge Taylor in this Court.

Judge Taylor filed a post-hearing motion to dismiss and for other relief, seeking reconsideration and dismissal of the complaint on the basis that the evidence at the hearing revealed "nothing more tha[n] mere legal errors which cannot support a finding that any of the pertinent Canons of Judicial Conduct were violated." Judge Taylor asserted that there was "no evidence in the record" that she "knowingly and/or willingly violated any statutes or

legal rights," and that "she did not knowingly and/or willingly commit any legal errors."

Judge Taylor also requested that the Commission reconsider the admission and use of documents relating to "prior contacts" between Judge Taylor and the Commission, contending that there is no legal basis for the use of such documents. Judge Taylor argued that any slight probative value of the documents is substantially outweighed by their prejudicial effect, the use of such documents violates her right of confidentiality in the Commission's review process, and denies her equal protection and due process rights under the United States and Virginia Constitutions. [3]

Judge Taylor also asserted that an email written by the chairman of the Commission, Judge Larry D. Willis, Jr., to the juvenile and domestic relations court appeared to have "prompted and/or played a role" in one of Judge Taylor's prior informal contacts with the Commission. Therefore, Judge Taylor argued that Judge Willis should have recused himself.

Additionally, Judge Taylor argued that as

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[3] Judge Taylor has abandoned her equal protection argument in this Court.

applied to the facts of the complaint against her, the Canons are unconstitutionally vague and without appropriately definite standards, resulting in an arbitrary and capricious process.

The Commission denied Judge Taylor's motion by order dated April 14, 2009. In an accompanying letter, which addressed the admission of documents relating to prior contacts, the Commission stated that, pursuant to Code § 17.1913, whatever record the Commission files with its complaint in this Court becomes public. The Commission also maintained that certain exhibits would not be sealed because they, or the information they contained, had already become public as part of the circuit court file.

On April 28, 2009, the Commission filed its complaint with this Court. In her answer to the Commission's complaint, Judge Taylor alleged that the evidence in the record was insufficient to establish that she "knowingly and/or willingly violated any statutes, legal rights and/or [the] [C]anons." In addition, Judge Taylor alleged that there is no factual basis for any findings against her, that her motion to dismiss and for other relief is well-founded, and that there is insufficient basis for a censure.

II. CANONS OF JUDICIAL CONDUCT

The relevant portions of the Canons at issue in this case are:

> Canon 1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
>
> A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of these Canons are to be construed and applied to further that objective.
>
> Canon 2. A Judge Shall Avoid

1.15

Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

. . . .

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

. . . .

Adjudicative Responsibilities.–

. . . .

> A judge shall be faithful to the law and maintain professional competence in it. . . .

Va. Sup. Ct. R., Part 6, § III, Canons 1, 2, and 3.

III. ANALYSIS

The Commission's filing of a formal complaint in this Court triggered our duty to conduct a hearing in open court for the purpose of determining whether Judge Taylor "engaged in misconduct while in office, or . . . has engaged in conduct prejudicial to the proper administration of justice." Va. Const. art. VI, § 10.

> In conducting the hearing on the formal complaint filed by the Commission, this Court considers the evidence and makes factual determinations de novo. The Commission must prove its

charges in this Court by clear and convincing evidence. The term "clear and convincing evidence" has been defined as "that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt in criminal cases. It does not mean clear and unequivocal." Judicial Inquiry & Review Comm'n v. Lewis, 264 Va. 401, 405, 568 S.E.2d 687, 689 (2002) (citations omitted). Factual determinations, findings and opinions of the Commission are not accorded any particular weight nor deference. Judicial Inquiry & Review Comm'n v. Peatross, 269 Va. 428, 444, 611 S.E.2d 392, 400 (2005). If after conducting a de novo review of the record and hearing argument of counsel, we find clear and convincing evidence that the judge has engaged in misconduct while in office or has engaged in conduct prejudicial to the administration of justice, we shall censure the judge or remove the judge from office. Va. Const. art. VI, § 10;

Judicial Inquiry & Review Comm'n v. Shull, 274 Va. 657, 670, 651 S.E.2d 648, 656 (2007).

Judge Taylor presents us with four issues to consider:

(1) Whether the record proves by clear and convincing evidence that Judge Taylor engaged in misconduct while in office or engaged in conduct prejudicial to the proper administration of justice sufficient to prove the charged violations of the Canons;

(2) Whether the Canons, as applied to Judge Taylor and the record in this case, are sufficiently definite and certain for purposes of due process;

(3) Whether it was lawful for the Commission to consider evidence of Judge Taylor's "prior contacts" with the Commission; and

(4) Whether Judge Taylor is entitled to any relief based on the conflict/recusal issue addressed in her posthearing motion to dismiss.

A. Sufficiency of the Evidence

The Commission argues that the record proves

by clear and convincing evidence that Judge Taylor engaged in misconduct while in office or in conduct prejudicial to the proper administration of justice. As an initial matter, the Commission asserts that K.M. had the right to appeal Judge Taylor's denial of bail. The Commission maintains that "it is a fundamental precept of Virginia criminal procedure that *all* decisions denying bail are appealable by the defendant, at least until such appeals reach this Court." The Commission contends that all criminal cases involve either pretrial bail, the denial of which is appealable pursuant to Code § 19.2-124, or post-conviction bail in circuit court, the denial of which is appealable pursuant to Code § 19.2-319. The Commission further argues that because appeals from a district court conviction are de novo, a defendant remains in pretrial status for bail purposes throughout the district court proceedings. The Commission cites Code § 19.2-120(A) and (E), which state:

> A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:
>
> 1. He will not appear for trial or hearing or at such other time and place

> as may be directed, or
>
> 2. His liberty will constitute an unreasonable danger to himself or the public.
>
> . . . .
>
> E. The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2124.

(Emphasis added.)

Furthermore, the Commission points out that Code § 19.2-124(A) provides that

> [i]f a judicial officer denies bail to a person, requires excessive bond, or fixes unreasonable terms of a recognizance under this article, the person may appeal therefrom successively to the next higher court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof where permitted by law.

According to the Commission, these statutes when read together make it clear that K.M. had a right to appeal Judge Taylor's denial of bond, as he remained within the status of "[a] person who is held in custody pending . . . hearing . . . or otherwise." Code § 19.2-120(A). The Commission asserts that K.M. falls within the definition of "person" contained in Code § 19.2-119: " *'Person'* means any accused, or any juvenile taken into custody pursuant to § 16.1-246." The Commission argues that nothing in the Code justified the exception Judge Taylor carved out for a juvenile held "postadjudication/pre-disposition." The Commission contends there is no plausible support in Virginia law for Judge Taylor's conclusion that a "no appeal zone" exists in the juvenile and domestic relations court when a juvenile is first taken into custody at the conclusion of the adjudicatory hearing and bail is denied pending a final disposition hearing.

The Commission argues that even if this Court determines Judge Taylor's actions were "mere legal error," this Court should not excuse the manner in which she "arrogated to herself the power to rule that her own decision was immune from appellate review." At oral argument, the Commission asserted, "there's a difference between wrongly concluding that [the May 3rd order] wasn't appealable and ruling, putting in your order that it's not appealable and then taking action

subsequent[ly] that effectively blocked the appeal." Additionally, the Commission contends this Court should not excuse Judge Taylor's refusal to retreat from her untenable position when given ample opportunity to do so. The Commission avers that Judge Taylor violated the Canons by her clear misappropriation of judicial power, which constituted "conduct prejudicial to the proper administration of justice." Va. Const. art. VI, § 10.

The Commission asserts that this Court should reject Judge Taylor's contention that she did not "rule" that her order could not be appealed and that she included the "nonappealable" language in the May 3rd order only to "flag" the issue for the circuit court. As support for this argument, the Commission points out that Judge Taylor referred to her action as a ruling in an email to her fellow juvenile and domestic relations court judges, in which Judge Taylor wrote:

I found after an adjudicatory hearing that [K.M.] posed a substantial risk of harm to the community and ordered him to be securely detained pending disposition. [K.M.'s counsel] filed a motion the next day requesting that [K.M.] be released on bond. I denied that request and ruled that the order was interlocutory and nonappealable. . . . I ruled that the order was not appealable . . . .

(Emphasis added.)

Also, the Commission asserts that in Judge Taylor's answer to the Notice of formal charges, she did not deny ruling that the order was nonappealable and did not at that time state that she merely flagged the issue for the circuit court.

The Commission argues that the clerk of court believed that the clerk's office of the juvenile and domestic relations court was compelled by the May 3rd order to reject K.M.'s notice of appeal, because the order stated it was "an interlocutory, nonappealable order." The Commission asserts that when the deputy clerk consulted Judge Taylor about whether the May 3rd order was appealable, Judge Taylor's only response of directing the deputy clerk to the order was tantamount to insuring that the clerk's office would decline to process the notice of appeal. The Commission contends that Judge Taylor violated the Canons by directly thwarting an appeal by ruling that her own decision was not subject to appeal and by advising the deputy clerk that the order was not appealable, when Judge Taylor knew the clerk was faced with the decision whether to accept a notice of appeal from K.M.'s attorney.

Judge Taylor contends that nothing in the record supports the Commission's assertion that she

violated any of the subject Canons. Rather, Judge Taylor argues, the record shows that she attempted to apply the law exactly as it is written and the Commission offered no plausible theory to support its assertion that she committed a clear misappropriation of judicial power.

Judge Taylor maintains that a post-adjudication, predisposition detention pursuant to Code § 16.1-248.1(G) does not implicate Code § 19.2-124 bail appeal rights because the proceeding is no longer in the pretrial stage. Furthermore, Judge Taylor asserts that Code § 19.2-120 distinguishes "bail" from "detention," and subsection E of that statute directs a judicial officer to "inform the person of his right to appeal from the order denying bail or fixing the terms of bond or recognizance," but does not mention "detention." According to Judge Taylor, "[g]iving due consideration to the words actually used by the General Assembly in the subject statutes, [her] reading of the provisions is correct or, at a minimum, plausible and supportable."

Judge Taylor reiterated that the language in the May 3rd order that it was an "interlocutory, nonappealable" order was included to flag the order for the circuit court to ensure that the appealability issue would be addressed. Judge Taylor contends that this Court's prior opinions addressing

complaints brought by the Commission support dismissal of the complaint against her. Judge Taylor asserts that her case is distinguishable from Lewis, as there is no allegation nor evidence that she defied or disrespected an order of any higher court. 264 Va. at 406, 568 S.E.2d at 690. Moreover, according to Judge Taylor, the statutes at issue leave room for a difference of opinion, and she argues that several of her fellow judges on the juvenile and domestic relations court agreed with her analysis. She acknowledged, however, that her legal interpretations could be mistaken. In this manner, Judge Taylor contends that her case is similar to Peatross, as the record in this matter reveals, at worst, mistakes of law, which alone do not warrant discipline. 269 Va. at 447-48, 611 S.E.2d at 402-03.

As an initial matter, we note that it is difficult to understand Judge Taylor's position that the General Assembly intended to create a "no appeal zone" for juveniles held postadjudication, pre-disposition. The weakness of Judge Taylor's argument can be demonstrated by one example, which in essence was delineated in K.M.'s May 4, 2007 letter to Judge Taylor. If a juvenile and domestic relations judge has the authority to detain a juvenile in secure detention pending disposition without review by the circuit court, the judge, by extending the date of disposition, can effectively

require the juvenile to be detained indefinitely which would make the juvenile's right of appeal to the circuit court for de novo trial meaningless. Such a result is not only inconsistent with Virginia's statutory scheme providing for trial de novo for appeals from district courts to circuit courts, it also flies in the face of our commitment to allowing persons accused of crimes to challenge the denial of bond successively to the next higher court, and the statutory requirement that the judicial officer denying bail inform the defendant of his or her right to appeal.

However, the real issue in this case is not whether Judge Taylor made a legal error in denying K.M. the right to appeal his secured detention and denial of bail. The issue at the heart of this case is whether Judge Taylor thwarted K.M.'s right to have her ruling reviewed and, if she did thwart the appeal of her ruling, whether that is a violation of the Canons.

We conclude the Commission has met its burden of proving by clear and convincing evidence that Judge Taylor committed the violations of the Canons charged in the Notice of the Commission dated January 13, 2009. Although the relevant statutes support a finding that Judge Taylor erred in her interpretation of the law, her actions rose to a level beyond a mistake of law when she

affirmatively blocked K.M.'s attempted appeal to the circuit court.

Judge Taylor's ethical violations began when she ruled that her May 3rd order was interlocutory and nonappealable. It is undisputed that when K.M.'s counsel attempted to file a notice of appeal at the clerk's office, Judge Taylor directed the deputy clerk to the "interlocutory, nonappealable" language appearing on the order when the deputy clerk sought guidance on whether to process the notice of appeal.

On May 4, 2007, K.M.'s counsel sought reconsideration of Judge Taylor's ruling by letter stating:

> I would respectfully ask that you reconsider your ruling as represented by the attached Order entered May 3, 2007 in this case. Please understand that I have the utmost respect for the Court and it is because of that I am asking this Court to reconsider its ruling in light of what I feel to be clear authority that would allow my client an appeal from your denial of his request for a bond pending the sentencing hearing in this matter, and also your denial of our request of the Clerk to appeal your ruling.

K.M.'s counsel cited Code §§ 19.2-120 and 19.2-124 in support of his contention that K.M. was entitled to bail and, if denied by the juvenile and domestic relations court, entitled to an appeal to the circuit court. K.M. asserted, through counsel, that Judge Taylor's rulings, while interlocutory, were appealable both as to the denial of bond and as to Judge Taylor's ruling that "[t]his order is [a] . . . nonappealable order," which denied K.M.'s right to appeal. K.M.'s counsel also stated that he had "previewed" the issue briefly with the circuit court and that the circuit court "certainly felt that [Judge Taylor's] denial of [K.M.'s] right to appeal on the motion for a bond is an appealable order." Judge Taylor did not respond to the letter.

K.M.'s counsel also wrote a letter dated May 4, 2007 to the clerk of court stating that K.M. wished to appeal the May 3rd order as well as Judge Taylor's determination that the order was not appealable, and requested that the clerk's office "forthwith today prepare appropriate appeal notices." K.M.'s counsel stated that if the clerk's office did not prepare the appeal notices, he would have no alternative but to proceed with a writ of mandamus. The clerk responded by letter dated May 7, 2007 to K.M.'s counsel, stating: "Please be advised that I am compelled to follow the ruling entered on May 3rd, 2007 by Judge Ramona D. Taylor, which states the order is interlocutory and

non-appealable." A copy of the clerk's May 7th letter was sent to Judge Taylor. Judge Taylor's only apparent response was to enter her May 8th "corrective order" nunc pro tunc to May 3, 2007, containing the same language ruling, "this order is an interlocutory, nonappealable order."

Judge Taylor's testimony at the Commission hearing further indicates her intention to thwart K.M.'s appeal. Judge Taylor admitted she knew that when the deputy clerk inquired into the order's appealability, the clerk was trying to decide whether to process the appeal. At the hearing, Judge Taylor repeatedly stated her belief that it was not her function as a judge to get involved in the processing of appeals and that her duties ended when she decided the case. Judge Taylor put the onus on the deputy clerk to consult her supervisor and on the clerk's office to consult this Court [OES] to obtain guidance on the appealability of the order irrespective of the language of the order. However, Judge Taylor never provided direction to either the deputy clerk or the clerk of court to contact this Court [OES]. Despite denying responsibility for what occurred after she entered the May 3rd order, Judge Taylor admitted to the Commission that she was the chief judge at the time and in that capacity,

she had the authority to direct the clerk what to do.[4]

Judge Taylor does not deny that the clerk's office may have felt compelled to refuse K.M.'s appeal as a result of Judge Taylor's instruction to refer back to the language of the order. Judge Taylor also gave no indication of any attempt on her part to correct what she now claims was the clerk's mistaken belief that she was compelled by Judge Taylor to refuse to process the appeal. Only four days after the order was entered, Judge Taylor was sent a copy of the letter from the clerk of court, which clearly stated that the clerk was "compelled" to follow Judge Taylor's ruling that the order was nonappealable. Even at oral argument, when Judge Taylor's counsel was asked, "when [Judge Taylor] said to the clerk that the order by express terms is not appealable, wasn't she at least implicitly directing the clerk what to do with the paperwork?," her counsel responded: "I think it's fair to say that one could walk away with that message."

It is clear from the record that Judge Taylor was well aware of K.M.'s counsel's efforts to secure K.M.'s release either through an appeal of the denial of bond or an appeal of Judge Taylor's order

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[4] Judge Taylor became chief judge of the juvenile and domestic relations court on July 1, 2006. Her term was for two years.

that the denial of bond was nonappealable, or by an appeal de novo of K.M.'s case to the circuit court. However, Judge Taylor did not seek to clarify what she now argues was her position that she: (1) did not rule the May 3rd order was not appealable; (2) did not direct the clerk's office to refuse K.M.'s notice of appeal; and (3) believed the clerk's office should contact this Court [OES] for guidance on processing the notice of appeal. In addition, Judge Taylor had knowledge of the writ of mandamus filed against the clerk of court and did no more to address the matter than send an email to fellow judges explaining her ruling and informing them that K.M.'s attorney had filed a writ of mandamus "to compel the filing of an appeal from [the May 3rd order]," and stated that she "ruled that the order was not appealable." Judge Taylor subsequently sent another email informing her fellow judges that the writ of mandamus had been granted, and thanking the clerk "for holding up so well under the pressure of this litigation and for keeping [Judge Taylor] so well informed."

Judge Taylor's argument that she did not rule that her May 3rd order was not appealable is implausible. Judge Taylor described her action as a "ruling" in her email to her fellow judges. Thus, when the deputy clerk asked whether the order was appealable, Judge Taylor reinforced the effect of her ruling by directing the clerk to the "nonappealable"

language that Judge Taylor herself typed on the order. In addition, Judge Taylor's argument that her ruling that the order was interlocutory and nonappealable was merely a "red flag" for the circuit court is equally implausible. Judge Taylor has produced no other examples of ruling an order nonappealable for use as a "red flag" to the circuit court. Finally, what makes her "flagging" argument most implausible is that her actions prevented the order from ever reaching the circuit court where it could purportedly serve as a "red flag." If the interlocutory and nonappealable language was truly intended as a "red flag," Judge Taylor should have promptly advised the deputy clerk to process the appeal so that the circuit court could rule.

A judge may not prevent the appeal of his or her own decisions. More than a century ago, we recognized the basic principle that a court cannot prevent its own decision from being reviewed on appeal by refusing to certify the facts proved and the evidence in the case. Powell v. Tarry, 77 Va. 250, 264 (1883). Therefore, it is clear that a court cannot expressly rule that its own decision is not subject to appellate review, by ruling the order is interlocutory and nonappealable.

We do not agree with Judge Taylor's argument that she did not thwart K.M.'s appeal because once she made her ruling, the case was out

of her hands. It is disingenuous of Judge Taylor to claim that when she responded to the clerk who asked her whether the appeal should be processed, Judge Taylor was not in a supervisory position over that clerk. Her argument that she was acting as the presiding judge and not the chief judge with supervisory authority over the clerk's office was certainly never made clear to the deputy clerk or the clerk of court. What is clear is Judge Taylor knew that when she pointed the deputy clerk to the language of her ruling that the deputy clerk was not going to process the appeal. Judge Taylor also knew in the days following that the clerk of court had refused to process the appeal because the clerk felt compelled by Judge Taylor's order not to process it.

Judge Taylor's argument that she believed the clerk's office should contact this Court [OES] for guidance on processing the appeal is equally disingenuous. Although she now states that processing the appeal is in the nature of a ministerial act under the supervision of the clerk, she never made that statement to the deputy clerk when the deputy clerk asked about processing the appeal. Furthermore, Judge Taylor's position that the clerk should have brought any questions to this Court [OES] was never communicated to the clerk, despite K.M.'s concerted efforts to obtain review by a higher court in order to secure his release from custody. Finally, Judge Taylor's argument that she

had nothing more to do with whether the case was appealed after her entry of the May 3rd order is belied by her entry of the corrective order on May 8, 2007 nunc pro tunc to May 3, 2007 amidst the threat of a pending writ of mandamus.

Judge Taylor's actions in thwarting K.M.'s appeal of the denial of bond and even of his appeal of her interlocutory and purportedly nonappealable ruling violated the law. When K.M. and his family were prevented by Judge Taylor's actions from obtaining appellate review of her rulings, public confidence in the integrity and impartiality of the judiciary was diminished. Judge Taylor violated Canons 1, 2A, and 3B(2) and these violations constituted conduct prejudicial to the administration of justice.

B. Due Process

Judge Taylor asserts that the Canons are unconstitutionally vague and without appropriately definite standards as applied to the facts in the complaint against her, and that vague and indefinite laws and regulations offend due process rights. Judge Taylor argues that "[a] close reading of the subject Judicial Canons reveals that they are a mix of clear standards and vague aspirational statements." According to Judge Taylor, Canon 1's

requirement that a judge "shall personally observe [high standards of conduct] so that the integrity and independence of the judiciary will be preserved" does not describe a meaningful standard of conduct for purposes of a disciplinary case. Judge Taylor argues that Canon 2's requirement that a judge act "at all times in a manner that promotes public confidence" likewise sets forth no particular standards or guidelines. Lastly, Judge Taylor contends that Canon 3's requirement to "be faithful to the law" is "far more aspirational than measurable." Therefore, Judge Taylor maintains that the subject Canons are unconstitutionally vague and insufficiently definite to satisfy due process rights in a disciplinary matter.

The Commission asserts that Judge Taylor cites no authority holding that the Canons violate due process because they are impermissibly vague. According to the Commission, courts in other jurisdictions have rejected due process challenges to codes of judicial conduct, and thus it urges this court to likewise reject Judge Taylor's vagueness due process argument.

We hold that the Canons are sufficiently definite and certain to withstand Judge Taylor's due process challenge. "The procedural due process

requirements of the Constitution of Virginia compel the Commission, and this Court, to recognize the balance that must be struck between protecting the integrity of the judiciary and the rights of individual judges." Judicial Inquiry & Review Comm'n v. Elliott, 272 Va. 97, 114, 630 S.E.2d 485, 493 (2006).

Courts in other jurisdictions that have considered whether canons of judicial conduct violate "due process" because they are impermissibly vague have rejected such claims. See In re Assad, 185 P.3d 1044, 1052 (Nev. 2008) (Canon 2A not vague); In re McGuire, 685 N.W.2d 748, 762 (N.D. ("courts in other jurisdictions appear to have routinely rejected vagueness challenges to codes of judicial conduct"); In re Hill, 8 S.W.3d 578, 582-83 (Mo. 2000) (rejecting "vagueness" challenge to Canons 2A and 2B, holding that "[n]either absolute certainty nor impossible standards of specificity are required," and that "[t]his is especially true in judicial discipline."); Comm'n on Judicial Performance v. Spencer, 725 So.2d 171, 176 (Miss. 1998) (rejecting "vagueness" challenge to Canons 1, 2A, 2B, and 3B, holding that "the Canons are sufficient to put [persons] of common intelligence on notice of what type of conduct is prohibited."); In re Young, 522 N.E.2d 386, 387-88 (Ind. 1988) (rejecting "vagueness" challenge to Canons 1 and 2, holding that "a greater degree of flexibility and

breadth is permitted with respect to judicial disciplinary rules and statutes than is allowed in criminal statutes.").

"The test for determining whether the Canons are vague is whether they convey to a judge a sufficiently definite warning of the proscribed conduct when measured by common understanding and practice." In re Hill, 8 S.W.3d at 582. As relevant to the issues in this case, all three Canons which the Commission alleges Judge Taylor violated require a judge to comply with the law so that there will be public confidence in the integrity and impartiality of the judiciary.

The Canons for the Commonwealth of Virginia contain a Preamble, which provides in relevant part that

[t]he Canons of Judicial Conduct are intended to establish standards for ethical conduct of judges. They consist of broad statements called Canons, specific rules set forth in Sections under each Canon and Commentary. The text of the Canons and the Sections is authoritative. Each Commentary, by explanation and example, is advisory and

provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

Va. Sup. Ct. R., Part 6, § III, Preamble.

The Commentary to Canon 1 includes the following language: "Although judges should be independent, they must comply with the law . . . . [V]iolation of this Canon diminishes public confidence in the judiciary and thereby does injury to the system of government under law." Canon 2A requires a judge to comply with the law in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 3B(2) requires a judge to be faithful to the law.

The Commission has alleged that Judge Taylor's thwarting of K.M.'s appeal was a violation of law which diminished public confidence in the judiciary, an allegation that we have concluded has been established by clear and convincing evidence. The relevant Canons clearly prohibit a judge's failure to follow the law in such a manner as to fail to promote public confidence in the integrity and impartiality of the judiciary. There can be no

"vagueness" in the application of the relevant Canons to the conduct in question.

C. The Commission's Consideration of "Prior Contacts"

Judge Taylor cites Code § 17.1-913 to support her argument that it was improper for the Commission to admit and consider evidence of Judge Taylor's prior contacts with the Commission. Specifically, she notes that the statute provides that all prior contacts "not filed with the Supreme Court in connection with a formal complaint filed with that tribunal, shall be kept in the confidential files of the Commission." Code § 17.1-913(A).

Judge Taylor contends that Rule 16 of the Rules of the Judicial Inquiry and Review Commission applies and requires that the records of a proceeding concluded "without an adverse finding by the Commission against a judge . . . be maintained in the Commission's confidential files." 15 VAC § 10-10-10. Judge Taylor asserts that neither Code § 17.1-913 nor Commission Rule 16 allow for the removal of the confidentiality of records of complaints that were not deemed "well founded," and the 2002 and 2006 prior contacts were not determined to be well founded.

Additionally, Judge Taylor argues that unlike Shull, in which Judge Shull's demeanor was discussed in a prior informal proceeding and that proceeding was later considered by this Court for purposes of disposition, the "prior contacts" Judge Taylor had with the Commission were not "directly relevant" to the issues now before the Court. Rather, Judge Taylor states they are irrelevant and more prejudicial than probative of any issue in dispute. The prior contacts, Judge Taylor contends, are irrelevant because the 2002 contact related to an in camera interview and the 2006 contact related to a complaint about starting court late, and both were resolved in her favor. Judge Taylor asks this Court to disregard the prior contacts evidence when determining whether she committed any violation during the 2007 events at issue.

The Commission relies on Shull to support its argument that consideration of Judge Taylor's prior contacts with the Commission was appropriate. 274 Va. at 676-77, 651 S.E.2d at 659. According to the Commission, this Court expressly referred to and relied upon evidence of prior contacts in its decision to remove Judge Shull from office. The Commission maintains that with regards to the issue of disposition, this Court should be presented with evidence regarding a judge's past contacts with the Commission. The Commission cites Rule 13(B) of the Rules of the Judicial Inquiry and Review

Commission, which provides that any "material [and] relevant" evidence may be admitted. 15 VAC § 10-10-10.

Additionally, the Commission contends that evidence surrounding Judge Taylor's 2002 informal contact with the Commission was relevant to show whether she was amenable to discipline by the Commission or whether the matter needed to be referred to this Court. The Commission maintains that Code § 17.1-913, regarding confidentiality of the record sent by the Commission to this Court in support of a complaint, and Commission Rule 16, regarding preservation of files at the Commission, are not relevant to the admissibility of evidence of prior contacts at the evidentiary hearing.

We hold that the evidence regarding Judge Taylor's prior contacts with the Commission was properly admitted by the Commission and is now properly before us for review. At the outset of the Commission hearing, counsel for the Commission stated that "the exhibits are all in the red binder there on the witness desk. . . . But the sides are in agreement that there's no objection to the admission of any of the exhibits." Counsel for Judge Taylor acknowledged the agreement as to the exhibits contained in the binder. The binder, which is part of the record before this Court, contains the Commission's exhibits described as

"[c]orrespondence related to judge's 2001-02 informal contact with JIRC," "[r]edacted annotated agenda from JIRC meeting 4-19-02," "[t]ranscript of judge's informal meeting with JIRC dated 5-21-02," and "[c]orrespondence related to judge's 2006 informal contact with JIRC." Judge Taylor's agreement to the Commission's admission of the exhibits is fatal to her argument that the Commission erred in admitting those same exhibits. Rule 5:25.

D. Recusal of Commission Chairman

Judge Taylor argues that the Commission's chairman, Judge Willis of the Chesapeake Juvenile and Domestic Relations District Court, should have recused himself due to his status as complainant in a prior contact with the Commission. According to Judge Taylor, Canon 3E requires disqualification of the judge from any proceeding in which his or her "impartiality might reasonably be questioned," including instances in which the judge has "personal knowledge of disputed evidentiary facts concerning the proceeding," is a "party to the proceeding," or is likely "to be a material witness." Judge Taylor contends that the proceedings before the Commission were tainted by Judge Willis' involvement and therefore seeks dismissal of the complaint.

The Commission maintains that it can be reasonably inferred that Judge Taylor was aware of Judge Willis' involvement in a prior informal contact since 2006 and therefore knew of the purported grounds for Judge Willis' recusal at the outset of the Commission's evidentiary hearing in 2009, but failed to timely object to his participation. Judge Willis' role in Judge Taylor's 2006 prior contact with the Commission is reflected by an email dated January 26, 2006 from Judge Willis to Judge Deborah M. Paxson, who at the time was the chief judge of the Virginia Beach Juvenile and Domestic Relations District Court, regarding an issue of delays in that court which adversely affected proceedings in the Chesapeake Juvenile and Domestic Relations District Court. The email did not name any judge responsible for the delays and expressly stated: "I do not want any information about who the judge was . . ." However, Judge Willis requested in his email that Judge Paxson notify the judges of the juvenile and domestic relations court of its contents. The Commission argues that it may be inferred that Judge Paxson did notify the judges, including Judge Taylor, of Judge Willis' complaint in 2006.

We agree with the Commission's waiver argument, and hold that Judge Taylor did not timely object to Judge Willis' participation in the present proceedings. "A motion for disqualification

[of a judge] must be made when the movant learns the grounds upon which the motion is based; thereafter, the motion comes too late." Mason v. Commonwealth, 219 Va. 1091, 1098, 254 S.E.2d 116, 120 (1979). We therefore will not consider this issue. Rule 5:25.

IV. CONCLUSION

In considering the record before us, we note letters from attorneys who have appeared before Judge Taylor. These letters offer testaments to Judge Taylor's professionalism as an attorney and as a judge of the juvenile and domestic relations court. We have reviewed those submissions as part of our consideration of the proper disposition of this case.

Addressing the issue of disposition, Judge Taylor asks us to compare the facts in four published opinions by this Court addressing complaints brought by the Commission, and conclude that the record in this case supports a dismissal of this Complaint. In addition, Judge Taylor argues that her "prior contacts" with the Commission should not be construed as a lack of amenability to informal discipline on her part, but rather, a lack of courtesy on the part of the Commission.

The Commission also directs us to a comparison of prior disciplinary complaints brought by the Commission and specifically, to the case of Judicial Inquiry & Review Commission v. Lewis. In addition, the Commission asks us to consider Judge Taylor's prior experience with the Commission as an indication of her lack of amenability to informal discipline.

We agree with the Commission that this case is very comparable to Lewis, in which we censured a district court judge. Id. at 407, 568 S.E.2d at 690. As in Lewis, Judge Taylor violated the Canons by improper conduct in a single case. Id. at 405-07, 568 S.E.2d at 689-90. In both cases, the judges involved violated Canons 1, 2A, and 3B(2). In Lewis, the judge enforced a contempt order that he knew had been stayed by the circuit court. Id. at 403-04, 568 S.E.2d at 688. Here, Judge Taylor thwarted any review of her secure detention order by the circuit court through appeal of her denial of bond and appeal of her order denying appeal.

In Lewis, the direct harm caused by the judge's ethical violation was a father's incarceration for several hours in disregard of a circuit court's stay order. Id. at 404, 568 S.E.2d at 688. In this case, Judge Taylor's ethical violation blocked appellate review of her rulings and forced K.M. to remain in secure detention for nine days before his

writ of mandamus was reviewed by the circuit court and he was released to the custody of his parents.

Judge Lewis was censured with no evidence of prior disciplinary contacts with the Commission. In this case, we do not believe it is necessary to consider Judge Taylor's disputed prior disciplinary record to conclude that censure as sought by the Commission is the appropriate remedy.

In Lewis, we stated that "[p]ublic confidence in the judiciary and the administration of our legal system depends upon faithful adherence to the law . . . . Courts cannot reasonably expect citizens to comply with their orders if the courts themselves do not yield to the orders of higher courts." Id. at 406, 568 S.E.2d at 690. Although Judge Taylor was not faced with an order from the circuit court reviewing her decision and compelling K.M.'s release, she did impermissibly shield her ruling from any review. Judge Taylor's actions, which prevented K.M.'s attorney from seeking his release from secured detention by means authorized by law, impair public confidence in the judiciary and the administration of our legal system. Unless citizens can trust that judges will follow the law, our courts will lose the public's respect and confidence upon which our legal system depends.

Accordingly, we order that Judge Taylor be,

and hereby is, censured for engaging in "conduct prejudicial to the proper administration of justice." Va. Const. art. VI, § 10; Code § 17.1-906.

Censure ordered.

JUSTICE KOONTZ, with whom JUSTICE GOODWYN joins, dissenting.

I respectfully dissent. In my view, upon a de novo review, the evidence in this case falls short of clear and convincing evidence that Judge Ramona D. Taylor, a judge of the City of Virginia Beach Juvenile and Domestic Relations District Court, violated the Canons of Judicial Conduct. I therefore do not agree that censure of Judge Taylor by this Court is warranted under Article VI, Section 10 of the Constitution of Virginia.

Many of the historical and procedural facts which ultimately led to the charges against Judge Taylor by the Judicial Inquiry and Review Commission ("the Commission") are not in dispute. On May 2, 2007, Judge Taylor conducted an adjudicatory hearing on a misdemeanor assault charge against a fifteen year old juvenile ("K.M."). K.M. was represented by counsel at that hearing. Upon K.M.'s plea of "no contest" and the evidence presented, Judge Taylor found K.M. guilty of that charge. K.M. had previously been before Judge Taylor on February 5, 2007 regarding a child in

need of services petition ("CHINS petition") filed by his parents. With regard to the CHINS petition, Judge Taylor had ordered, among other things, that K.M. be on good behavior and to refrain from illegal substance abuse. At the conclusion of the adjudicatory hearing on the assault charge, Judge Taylor, as authorized by Code § 16.1-273, ordered that a "social history," which she described as a "full background investigation," be prepared and set the matter for final disposition on May 24, 2007.

Finding that K.M. posed "a substantial risk of harm to the community based upon the egregious nature of the assault," Judge Taylor remanded him to secure custody pending the dispositional hearing scheduled for May 24, 2007. K.M.'s counsel requested Judge Taylor either to enter a final disposition or to release K.M. on bond pending the hearing scheduled for May 24, 2007. In an order entered on May 3, 2007, and subsequently amended nunc pro tunc on May 8, 2007, Judge Taylor denied K.M.'s request for bond pending the May 24, 2007 hearing. In Judge Taylor's order, she stated her reasons for denying the request for bond in the following way:

Section 19.2-120 of the Virginia Code addresses the factors a judge should consider in determining the bond of a person "held in custody pending trial or hearing." The defendant in this

case is being held post-trial and pre-disposition pursuant to § 16.1 248.1(G) of the Virginia Code. The right to appeal a pre-trial bond determination provided in section 19.2-120(E) of the Virginia Code does not apply to a juvenile held post-adjudication/pre-disposition.

The order further states tha"[t]his order is an interlocutory, nonappealable order."

Given the fact that K.M. had assaulted a younger boy to the extent that the victim required medical attention and the fact that Judge Taylor was aware K.M. had not responded favorably to the conditions previously imposed upon him as a result of the CHINS petition, the Commission concedes that Judge Taylor acted within her authority in finding K.M. guilty of the assault charge and in finding that he posed a risk of harm to the community. Additionally, the Commission does not contest that Judge Taylor was authorized by statute to deny K.M.'s request for the immediate disposition of the assault charge without having the benefit of a social history to guide that disposition. Moreover, the Commission also concedes that Judge Taylor did not act improperly in denying K.M. a bond. Rather, the Commission's claim of misconduct is based on the allegation that Judge Taylor intentionally "thwarted" K.M.'s attempt to appeal the order denying his request for bond to the circuit court.

As to that allegation, the undisputed material facts and the reasonable inferences that may be drawn from those facts do not establish, in my view, that Judge Taylor intentionally thwarted K.M.'s attempt to appeal the order denying his request for bond pending the scheduled dispositional hearing on May 24, 2007. It is undisputed that a number of Judge Taylor's colleagues on the City of Virginia Beach Juvenile and Domestic Relations District Court shared her view that an order such as the order at issue in K.M.'s case was interlocutory and nonappealable. Code § 16.1-248.1(G) provides, in pertinent part, that: "The court is authorized to detain a juvenile . . . at any time after a delinquency petition has been filed, both prior to adjudication and after adjudication pending final disposition subject to the time limitations set forth in [Code] § 16.1-277.1." (Emphasis added.) The latter Code section establishes a time limitation of thirty days for the completion of the dispositional hearing in a case involving a juvenile held in secure detention. However, with reference to the issue of bond, Code § 19.2-119 defines, for purposes of Code § 19.2-120, a "Person" to mean "any accused, or any juvenile taken into custody pursuant to § 16.1-246." The provisions for bail contained in Code § 19.2-120(A) reference "[a] person who is held in custody pending trial or hearing for an offense."

These statutory provisions were the basis

upon which Judge Taylor and her colleagues concluded that a juvenile held in secure detention following an adjudicatory hearing and prior to a final dispositional hearing was not entitled to rely upon the appeal provisions of Code § 19.2-120. In a prior opinion, however, this Court has made it clear that mistakes of law alone do not warrant discipline. Judicial Inquiry & Review Comm'n v. Peatross, 269 Va. 428, 447-48, 611 S.E.2d 392, 402-03 (2005). These statutory provisions are not so readily apparent in their application to the circumstances of K.M.'s case as to be totally inconsistent with Judge Taylor's assertion that she "sincerely believed" that her order denying bail was interlocutory and nonappealable.

As suggested by the majority, the issue at the heart of this case is whether Judge Taylor's actions rose to a level beyond a mistake of law. The focus of that issue rests principally upon Judge Taylor's response to the deputy clerk's inquiry regarding whether K.M.'s notice of appeal of the denial of bond should be accepted and processed. By stipulation, Judge Taylor and the Commission agree that the deputy clerk went to Judge Taylor and advised her that K.M.'s counsel was at the clerk's office to file a notice of appeal. "Judge Taylor confirmed that the order by its express terms was not appealable, but did not state to the deputy clerk that the notice of appeal should not be accepted." The deputy clerk

did not accept the notice of appeal. As a result, counsel for K.M. successfully obtained a writ of mandamus from the circuit court and K.M. was released on bond from detention.

Beyond question, the deputy clerk's refusal to accept and process K.M.'s appeal resulted from Judge Taylor's response to the deputy clerk's inquiry. In my view, it is equally clear that Judge Taylor's response was based upon a sincere belief that her order concerning bail was interlocutory and nonappealable. Several undisputed facts readily support that conclusion. At the time of her ruling, Judge Taylor orally explained to K.M.'s counsel her rationale for believing that her bond ruling was interlocutory and nonappealable and she wrote that rationale in her order.

The majority reasons that the issue is "whether Judge Taylor thwarted K.M.'s right to have her ruling reviewed and, if she did thwart the appeal of her ruling, whether that is a violation of the Canons." Unlike the majority, I am of opinion that the Commission has not shown by clear and convincing evidence that Judge Taylor's actions were knowingly improper, and that this difference in the interpretation of the evidence presented is especially relevant to the determination of whether she "has engaged in conduct prejudicial to the proper administration of justice" as contemplated by

Article VI, Section 10 of the Constitution of Virginia. In this case, the Commission argues that, if this Court determines Judge Taylor's action were "mere legal error," she "arrogated to herself the power to rule that her own decision was immune from appellate review." This argument is unpersuasive because the evidence establishes that, while legally in error, Judge Taylor was merely following the law as she and her colleagues understood it to be.

In Peatross, this Court declined to censure a jurist for legal errors. 269 Va. at 449-50, 611 S.E.2d at 403-04. This Court stated that certain errors and omissions committed by Judge Peatross were errors of law, "not violations of the Canons." Id. at 447, 611 S.E.2d at 402. This Court cited with approval cases from Illinois and California that stated that mere legal error should not be the subject of discipline. Id.; see Oberholzer v. Comm'n on Judicial Performance, 975 P.2d 663, 680 (Cal. 1999); Harrod v. Illinois Courts Comm'n, 372 N.E.2d 53, 65 (Ill. 1977); see also In re Inquiry Concerning a Judge, No. 207 (Tucker), 501 S.E.2d 67, 71 (N.C. 1998). We stated that not punishing a judge for legal errors is important in order to maintain the independence of the judiciary. See Peatross, 269 Va. at 447, 611 S.E.2d at 402 (citing Harrod, 372 N.E.2d at 65) (stating that in order to maintain an independent judiciary, errors of law should not be

the subject of discipline)).

In my view Peatross is controlling in this case because there is insufficient evidence to establish that the legal error committed by Judge Taylor was accompanied by bias, abuse of authority, or intentional disregard of the law. It is noteworthy in that regard that the orders and actions of Judge Taylor occurred in May 2007, and the present proceedings were conducted before the Commission in March 2009. To the extent that the majority finds degrees of conflict in Judge Taylor's testimony as expressed in its opinion, such is readily understandable with the lapse of time involved. Moreover, these conflicts do not establish a violation of the Canons under the clear and convincing standard required to establish such a violation.

Judge Taylor's actions do not rise to the level of judicial misconduct, particularly in light of this Court's precedents. Unlike the circumstances in Judicial Inquiry & Review Comm'n v. Lewis, 264 Va. 401, 406, 568 S.E.2d 687, 690 (2002), Judge Taylor did not defy a superior court's order. Unlike the circumstances in Judicial Inquiry & Review Comm'n v. Shull, 274 Va. 657, 676-77, 651 S.E.2d 648, 659-60 (2007), Judge Taylor did not demean litigants and bring discredit to the judiciary. In the absence of clear and convincing evidence that Judge Taylor acted intentionally to thwart the appeal,

rather than merely erred in failing to direct the deputy clerk to perform the ministerial duty of accepting and processing the notice of appeal of her order, I cannot agree with the majority that her actions violated the Canons of Judicial Conduct.

The censure of a judge for misconduct has obvious and drastic consequences for the judge both professionally and personally. Judges make errors of law, but such errors do not constitute misconduct unless, for example, the judge purposefully deprives a litigant of rights that the judge knows a litigant is entitled to by law. Without such a high standard, the independence of the judiciary will be constantly in question.

For these reasons, I would dismiss the complaint filed in this case by the Commission against Judge Taylor.

[DATED JANUARY 13, 2009]

NOTICE

TO: The Honorable Ramona D. Taylor

Under the authority of Article VI, Section 10 of the Constitution of Virginia and the enabling states contained in §17.1-902 et seq. of the Code of Virginia, the Judicial Inquiry and Review Commission charges that you have engaged in misconduct while in office or engaged in conduct prejudicial to the proper administration of justice while serving as a Juvenile and Domestic Relations District Court judge in the Second Judicial District, to wit:

You have failed to uphold the integrity and independence of the judiciary [Canon 1], to avoid impropriety and the appearance of impropriety in all of your activities [Canon 2], and to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Canon 2A]. You have also failed to be faithful to the law and maintain professional competence in it. [Canon 3B(2)].

Your are charged with violating the above-referenced Canons on the basis of the following facts:

1. On May 2, 2007, you presided at the adjudicatory hearing on a misdemeanor assault charge against a fourteen (fifteen - corrected without objection on 3-10-9) year-old defendant, Kristian Moore. The defendant was not in custody at the time of the hearing.

2. During the hearing, someone in the courtroom audience blurted our that the defendant had used a racial epithet toward the victim of the assault. You called witnesses to the stand to testify about the use of the racial epithet.

3. At the conclusion of the hearing, you found the defendant guilty as charged, made a finding that he represented a risk of harm to the community, and ordered that he be remanded to custody pending a disposition hearing that your scheduled for May 24, 2007. The defendant, by counsel, requested immediate sentencing so that the defendant could appeal. You denied the request and ordered that a social history be compiled for the disposition

hearing.

4. The defendant, by counsel, filed a written "motion for bond and release pending sentencing hearing." (Attachment A). On May 3, 2007, you entered an order denying the defendant's motion. The order expressly stated that it was "an interlocutory, non-appealable order." (Attachment B).

5. By letter from counsel dated May 4, 2007, the defendant asked you to reconsider your order and cited to authority that clearly gave the defendant the right to appeal your decision denying bail. (Attachment C). By order dated May 8, 2007, "nunc pro tunc" May 3, 2007, you persisted in your position that your denial of the defendant's "motion for bond and release" was interlocutory and non-appealable. (Attachment D).

6. The defendant, by counsel, attempted to appeal. The clerk of your court, who served at your pleasure as chief judge, refused to process the appeal. (Attachment E).

7. On May 7, 2007, the defendant, by counsel, filed in the Circuit Court for the City of Virginia Beach a petition for a writ of mandamus against the clerk, requesting that the clerk be ordered to process the appeal so that the matter could be reviewed by a circuit court judge. (Attachment F). At a circuit court hearing on May 11, 2007, the clerk defended herself in the action by asserting, through counsel, that she "was under a direct order by [you as] the Chief Judge... not to process this order for appeal." (Attachment G at p. 8).

8. By order dated May 11, 2007, the circuit court granted the mandamus petition. (Attachment H). By order of the same date, the circuit court ordered the release of the defendant to the custody of his parents. (Attachment I).

In accordance with the provisions of Rule 6C of the Rules of the Commission, you must file a written Answer to this Notice within twenty one (21) days after service hereof with Donald R. Curry, Counsel, Judicial Inquiry and Review Commission, Post Office Box 367, Richmond, Virginia 23218-0367. A formal hearing in this matter has been scheduled

for March 10, 2009, at 8:30 a.m., at the Commission's office in Richmond.

Counsel is authorized to sign this Notice on behalf of the Commission.

Donald R. Curry
Counsel

January 13, 2009

[FILED JANUARY 27, 2009]

VIRGINIA: JUDICIAL INQUIRY AND REVIEW COMMISSION

IN RE: JUDGE RAMONA D. TAYLOR
CASE NO.:

ANSWER TO NOTICE OF FORMAL CHARGES

The respondent, Judge Ramona D. Taylor, for her answer to the Notice of Formal Charges filed by the Judicial Inquiry and Review Commission, states as follows:

1. The respondent admits that on May 2, 2007, she presided at the adjudicatory hearing of a juvenile charged with a misdemeanor assault charge involving a juvenile victim. The respondent further admits that the defendant was not in custody at the time of the adjudicatory hearing.

2. The respondent admits that during the course of the adjudicatory hearing, it was brought to her attention that the defendant allegedly used a racial slur during the assault upon the victim. As much of the evidence regarding the assault had been

presented, with the defense attorney's concurrence, via a proffer from the investigating officers, Officer D. W. Johnson, the court required an eyewitness to testify regarding the incident after the information was provided regarding the racial slur. Before the information was provided about the racial slur, the victim had already testified the he had been punched in the face four to five times by the defendant, after he had told the defendant and his friends that they should not be smoking. The eyewitness, another juvenile, testified regarding the defendant's unprovoked attack upon the victim, identified the defendant in court, and testified that the defendant stated "what are you going to do now, nigger" after the victim had fallen to the ground. The respondent does not recall whether any other witnesses testified regarding the racial slur.

3. The respondent admits that the defendant's usage of a racial slur during the course of a brutal, unprovoked attack upon another juvenile (analogous to a hate crime), led to the respondent concluding that the defendant posed a substantial risk of harm to others in the community and the respondent remanding the defendant into custody pending a dispositional hearing scheduled for May 24, 2007. It is neither admitted nor denied that defense counsel requested an immediate sentencing, as the respondent has no recall regarding this assertion. The respondent admits that a social

history was ordered.

4. The respondent admits the allegations of paragraph 4 regarding the defense attorney's filing of a "motion for bond and release pending sentencing hearing" and the court's order of May 3, 2007, denying the motion.

5. The respondent admits that the defense attorney requested reconsideration of the court's order of May 3, 2007. The respondent denies that the defense attorney cited to authority that clearly gave the defendant the right to appeal the decision denying bail. The respondent asserts that the authority cited by the defense attorney is subject to contrary legal interpretations with regard to its applicability to juvenile defendants detained post-adjudication and pre-disposition. *See* e-mails circulated by the judgment of the Virginia Beach Juvenile and Domestic Relations District Court in May of 2007 regarding this appealability issue. (Attachment A).

6. The respondent admits that the defense attorney attempted to appeal the respondent's order denying bail to the defendant. The respondent denied that the Clerk of Court was serving at the respondent's pleasure as the Chief Judge when the Clerk refused to process the appeal. At all times when addressing the Clerk of Court regarding the

appealability of the respondent's pre-disposition detention ruling, the respondent functioned as the presiding judge, not as the Chief Judge. *See* the Clerk of Court's letter to the defense attorney in which she refers to the respondent as Judge Ramona D. Taylor, not as Chief Judge Ramona D. Taylor. (Attachment B). The Clerk of Court could have addressed the appealability issue with the Office of the Executive Secretary or with the other judges on the Virginia Beach Juvenile and Domestic Relations District Court. The Clerk of Court often seeks the input of the judges who are not serving as the Chief Judge as she deems appropriate. She was not at risk for any disciplinary measures being imposed by the respondent for her actions regarding the defendant's appeal, as the Chief Judge of our court, in recent years, has solicited the votes of the other judges on the court prior to acting upon personnel matters pertaining to the Clerk of Court (i.e., hiring, discipline, etc.).

7. The respondent admits that the defense attorney filed a Writ of Mandamus against the Clerk of Court on May 7, 2007. The respondent admits that the Circuit Court transcript indicates that the attorney for the Clerk of Court asserted that the Clerk was under a direct order by the respondent as the Chief Judge not to process the defendant's appeal. The respondent denies that the Clerk of Court's attorney correctly stated the capacity in

which the respondent served when the respondent advised the clerk regarding the appealability of the order of May 3, 2007.

8. The respondent admits that Judge Shockley of the Virginia Beach Circuit Court granted the mandamus petition and that Judge Canada of the Virginia Beach Circuit Court released the defendant.

WHEREFORE, the respondent, Judge Ramona D. Taylor, respectfully requests that the formal charges asserted in the Notice filed by the Judicial Inquiry and Review Commission be dismissed and removed from the Commission's docket.

/s/
JUDGE RAMONA D. TAYLOR

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing Answer to be sent via United States Mail on January 26, 2009, to Donald R. Curry, Counsel, Judicial Inquiry and Review Commission, Post Office Box 367, Richmond, Virginia 23218-0367.

/s/

Judge Ramona D. Taylor

[FILED APRIL 14, 2009]

Charge No. 2008-501

ORDER

On March 10, 2009, the Commission conducted an evidentiary hearing on the charges set forth in the Notice dated January 13, 2009. Judge Ramona D. Taylor appeared in person and was represented by Kevin Martingayle, Esquire. At the outset of the hearing, the Notice was amended without objection.

After due consideration of the evidence presented and the argument of counsel, the Commission determined that the judge had violated Canons 1, 2A and 3B(2), and that the charges set forth in the Notice were well-founded and of sufficient gravity to constitute the basis for censure. The Commission made an express finding that the judge had acted intentionally to thwart a juvenile defendant's attempt to appeal from the order that had denied his request for bail.

The Commission also determined that a formal complaint should be filed in the Supreme Court of Virginia, pursuant to Article VI, §10 of the

Constitution of Virginia and Virginia Code §17.1-902. Judge Taylor, however, subsequently filed, by her counsel, a "Motion to Dismiss and for Other Relief" dated March 25, 2009. After due consideration, the Commission denied the motion at its meeting on April 14, 2009.

The Commission, therefore, directs its counsel to file a formal complaint in the Supreme Court of Virginia upon the preparation of the hearing transcript and the record of the Commission proceedings.

_____ April 14, 2009

Larry D. Willis, Sr. Date

Chairman

ab

[FILED APRIL 28, 2009]

VIRGINIA: IN THE SUPREME COURT OF VIRGINIA

JUDICIAL INQUIRY AND REVIEW COMMISSION OF VIRGINIA,

Petitioner,

v. Record No.: 090845

RAMONA D. TAYLOR, Judge
of the Second Judicial District

Respondent.

COMPLAINT

Pursuant to Article VI, §10 of the Constitution of Virginia, the Judicial Inquiry and Revision Commission of Virginia, by its Counsel, files this formal Complaint against Ramona D. Taylor, Judge of the Second Judicial District, alleging that there are grounds of sufficient gravity to constitute the basis for her censure. In support of the Complaint, the Commission says as follows:

1. On January 13, 2009, the Commission issued a formal notice advising Judge Taylor that she was charged with violating the Canons of Judicial Conduct, on the basis of facts alleged in eight numbered paragraphs. (Attachment 1, copy of notice dated 1-13-09 as amended 3-10-09).

2. On March 10, 2009, the Commission conducted an evidentiary hearing at which Judge Taylor appeared in person and was represented by counsel. At the conclusion of the hearing, after due deliberation, the Commission determined that the charges in the notice were well-founded and of sufficient gravity to warrant the filing of a complaint in this Court. By order dated April 14, 2009, the Commission memorialized its decision and directed Counsel to file a formal complaint in this Court. (Attachment 2, copy of order dated 4-14-09).

3. Based upon the foregoing, the Commission asks the Court to establish a schedule for briefing and oral argument in order to provide the "hearing in open court" required by Article VI, §10 of the Constitution of Virginia and, thereafter, to determine whether Judge Taylor has engaged in misconduct while in office or in conduct prejudicial to the proper administration of justice. If the Court determines that she has, the Court then must determine whether the judge should be censured or removed.

4. In the opinion of the Commission, the taking of additional evidence is not necessary for the proper disposition of this Complaint.

Respectfully submitted,

JUDICIAL INQUIRY AND REVIEW COMMISSION OF VIRGINIA

By: /s/

Donald R. Curry, Counsel
Judicial Inquiry and Review Commission
100 North 9th Street, Suite 661
Richmond, VA 23219
(804) 786-6636
(804) 371-0650 (fax)
Virginia State Bar No. 16594
dcurry@courts.state.va.us

VERIFICATION

On April 21, 2009, Donald R. Curry, Counsel to the Judicial Inquiry and Review Commission of Virginia, appeared before me, was sworn, and stated under oath that the facts set forth in the foregoing

Complaint are true and correct to the best of his knowledge.

/s/
Notary Public

My commission expires: 9/30/2011

[FILED MAY 21, 2009]

IN THE SUPREME COURT OF VIRGINIA

JUDICIAL INQUIRY AND REVIEW
COMMISSION OF VIRGINIA,

Petitioner,

v. Record No.: 090845

RAMONA D. TAYLOR, Judge
of the Second Judicial District

Respondent.

ANSWER

Pursuant to the Order of the Virginia Supreme Court issued May 1, 2009, Ramona D. Taylor, Judge of the Second Judicial District, hereby files this Answer to the Complaint filed by the Judicial Inquiry and Review Commission of Virginia.

1. Judge Taylor admits the procedural allegations set out in ¶1 of the Complaint, but denies having engaged

in any improper conduct to warrant the issuance of the formal notice referenced in ¶1 of the Complaint.

2. Judge Taylor admits the contents of ¶2 of the Complaint, except for the allegation that the Commission made a decision after "due deliberation", which is an allegation that is beyond the knowledge of Judge Taylor because she was not present for the deliberations and is incapable of either admitting or denying the nature of the deliberations.

3. The first sentence of ¶3 of the Complaint states what the Commission is requesting of this Court, and does not appear to require a response. However, to the extent that a response may be a necessary, Judge Taylor admits that this Court has the authority to perform the actions requested by Commission. Regarding the second sentence of ¶3, Judge Taylor admits that the Commission determined the alleged violations to be "of sufficient gravity to constitute the basis for censure", as stated in the Commission's April 14, 2009 order, but denies that the

Commission has properly requested or may seek removal of Judge Taylor as a member of the judiciary. Moreover, under these circumstances, Judge Taylor denies that removal is a proper consideration for this Court, procedurally and/or substantively.

4. Paragraph 4 of the Complaint states the opinion of the Commission that additional evidence is not necessary for the proper disposition of this Complaint. Judge Taylor admits that this is the opinion of the Commission, but denies that this opinion is well-founded. Specifically, Judge Taylor believes that this Court should conduct a hearing and receive evidence regarding the "Motion to Dismiss and For Other Relief" forwarded to the Commission under cover of March 25, 2009, and in particular ¶3 of said motion which raises a conflict/recusal issue which has not been answered substantively by the Commission. Moreover, Judge Taylor believes that it is in the discretion of this Court to decide whether additional evidentiary hearings are necessary and/or appropriate for a proper disposition of

the Complaint filed by the Commission.

5. Anything not expressly admitted in this Answer should be taken as denied.

6. Judge Taylor affirmatively alleges that the evidence in the record is insufficient to establish that she knowingly and/or willingly violated any statutes, legal rights and/or canons of judicial conduct.

7. Judge Taylor affirmatively alleges that the unrebutted evidence in the record is that when made aware of the underlying legal dispute (which eventually led to the filing of a complaint before the Commission), the several Virginia Beach Juvenile and Domestic Relations District Court judges who responded to Judge Taylor's electronic mail communications all expressed support for her position and no one stated any disagreement with any action she had taken.

8. Judge Taylor affirmatively alleges that there is no factual basis in the record for any findings against Judge Taylor, nor did the Commission announce any

factual findings or legal grounds for a determination against Judge Taylor when it rendered and announced its decision at the conclusion of deliberations on the date of the hearing.

9. Judge Taylor affirmatively alleges that her "Motion to Dismiss and For Other Relief" filed under cover of March 25, 2009 was and is well-founded, and for any or all of the reasons stated therein, the relief she requested should have been granted and it was error for the Commission not to grant her relief.

10. Judge Taylor denies that there is a sufficient basis for a censure or any other form of discipline based upon the facts and evidence contained in the record.

WHEREFORE, for the foregoing reasons, Judge Ramona D. Taylor respectfully requests that this Honorable Court grant the following relief:

(1) Conduct such evidentiary proceedings as deemed necessary and appropriate for a full and proper disposition of the subject complaint, including, but not

limited to, proceedings relating to the conflict/recusal issue described in ¶3 of the Judge Taylor's previously filed "Motion to Dismiss and For Other Relief";

(2) Determine that the subject Complaint and the record upon which it is based are insufficient to justify the imposition of censure or any other form of discipline against Judge Taylor;

(3) Resolve all issues in controversy in favor of Judge Taylor and dismiss the Commission's Complaint in its entirety; and

(4) Award Judge Taylor such other and further relief as this Court may deem appropriate under the circumstances of this matter.

JUDGE RAMONA D. TAYLOR

By /s/
Of Counsel

Kevin E. Martingayle, Esquire
STALLINGS & BISCHOFF, P.C.
2101 Parks Avenue, Suite 801
Post Office Box 1687
Virginia Beach, VA 23451
(757) 422-4700
(757) 428-6982 (facsimile)
E-Mail: martingayle@sb-lawgroup.com

CERTIFICATE

I hereby certify that a true copy of the foregoing was sent via certified mail and electronic mail this 20th day of May, 2009, to Donald R. Curry, Esquire.

_____

Kevin E. Martingayle

[ENTERED DECEMBER 17, 2009]

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 17TH day of December, 2009.

Judicial Inquiry and Review
Commission of Virginia,

Petitioner,

against Record No. 090845

Ramona D. Taylor, Judge of the
Second Judicial District,

Respondent.

Upon consideration of the motion to the Court by Ramona D. Taylor, Judge of the Second Judicial District, by counsel, that Justice LeRoy F. Millette, Jr., withdraw the Court's opinion written by him and recuse himself or be recused by the Court from having further involvement with this matter, and upon consideration of the response by the Judicial Inquiry and Review Commission of Virginia to the motion, the motion that Justice LeRoy F. Millette,

Jr., be recused by the Court is denied on the ground that the issue of the recusal of an individual justice should be addressed to and by the individual Justice.

Furthermore, Justice LeRoy F. Millette, Jr., declines to withdraw the Court's opinion written by him and recuse himself from further involvement with this matter.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/

Deputy Clerk

[ENTERED JANUARY 20, 2010]

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday, the 20th day of January, 2010.

Judicial Inquiry and Review
Commission of Virginia,

Petitioner,

against Record No. 090845

Ramona D. Taylor, Judge of the
Second Judicial District,

Respondent.

Upon a Petition for Rehearing

On consideration of the petition of the respondent to set aside the judgment rendered herein on the 5th day of November, 2009 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: original order signed by a deputy clerk of the Supreme Court of Virginia at the direction of the Court.

Deputy Clerk

[ENTERED MARCH 15, 2010]

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 15TH day of March, 2010.

Judicial Inquiry and Review
Commission of Virginia,

Petitioner,

against Record No. 090845

Ramona D. Taylor, Judge of the
Second Judicial District,

Respondent.

On January 27, 2010 came the petitioner, by counsel, and filed a notice of intent to appeal to the Supreme Court of the United States and a request to stay issuance of the mandate in this case.

Upon consideration whereof, the Court denies petitioner's request to defer issuance of the mandate.

A Copy,

Teste:

/s/

Clerk

[ENTERED MARCH 15, 2010]

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 15TH day of March, 2010.

Judicial Inquiry and Review
Commission of Virginia,

Petitioner,

against Record No. 090845

Ramona D. Taylor, Judge of the
Second Judicial District,

Respondent.

For reasons stated in writing and filed with the record, it is ordered that the respondent by, and she hereby is, censured for engaging in "conduct prejudicial to the proper administration of justice." Va. Contr. art. VI, §10; Code §17.1-906.

A Copy,

Teste:

/s/

Clerk